LAW AND AGRICULTURAL DEVELOPMENT

IN

ZAMBIA

by

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ABSTRACT

Agriculture occupies a very important place in the Zambian economy as a source of foreign exchange and as a source of food. Whatever the explanations that have been offered for low productivity - droughts, excessive rains etc., the legal framework for agriculture has been a relevant factor even though it has received the least attention from lawyers and economists alike. Law and development studies have only assumed importance in the last twenty years, that is, since the attainment of independence of many African countries. This thesis seeks to add to the growing literature on the effect of law on the agricultural development of Zambia. It is divided into five substantive chapters and a conclusion.

The thesis opens with a general introduction showing the manner in which the colonial government used the law to encourage the development of a viable agricultural base from the time it assumed control from the British South Africa Company, through the depression years to the period leading up to independence. Chapter Two examines the land tenure systems that relate to agricultural land on State Land (formerly Crown Land). After independence government intervention through the land reforms of 1975 was calculated to give the State greater powers of land control. While the government has taken active steps to ensure the development of State Land, it has avoided interference with customary systems of landholding in the Reserves and Trust Land.

Chapter Three, therefore, examines the systems of landholding in the Reserves and Trust Land and evaluates the

same in the context of agricultural development. It also draws attention to the need for government to extend control to these areas and to provide a proper legal framework to enable those who are dissatisfied with customary land tenure to obtain documentary titles to land.

In order to speed up agricultural development, the role of the State has been extended to the provision of credit and marketing facilities. Chapter Four examines government credit policy as contained in policy statements as well as through the operation of its own specialised credit institutions and includes a discussion of the importance of various forms of security to all categories of farmers. Chapter Five examines the use by the government of statutory boards to control the production and marketing of agricultural commodities and the purposes of such control. The final chapter attempts to outline the reasons for the limited success of Zambian government policy in this area and demonstrates the limited role of law and legal solutions in promoting agricultural development.

The law is dated as of March, 1987.

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TABLE OF ABBREVIATIONS

AC	Appeal Cases
AFC	Agricultural Finance Company
ALB	Agricultural Lands Board
All ER	All England Law Reports
AMC	Agricultural Marketing Committee
ARMB	African Rural Marketing Board
BIICL	British Institute of International and Comparative Law
CO	Colonial Office
COZ	Credit Organization of Zambia
CPCMU	Copperbelt Province Co-operative Marketing Union/Central Province Co-operative Marketing Union
ECU	Eastern Co-operative Union
FAO	Food and Agricultural Organization
GMB	Grain Marketing Board
HMSO	Her/His Majesty's Stationary Office
KB	Kings Bench
LINTCO	Lint Company of Zambia
LPCMU	Lusaka Province Co-operative Marketing Union/Luapula Province Co-operative Marketing Union
MCB	Maize Control Board
NAMB	National Agricultural Marketing Board
NPCMU	Northern Province Co-operative Marketing Union
QB	Queens Bench
SPCMU	Southern Province Co-operative Marketing Union
TBZ	Tobacco Board of Zambia
UNECA	United Nations Economic Commission for Africa
UNIP	United National Independence Party
WPCMU	Western Province Co-operative Marketing Union

ZADB	**Zambia Agricultural Development Bank**
ZR	**Zambia Law Reports**

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1873 Supreme Court of Judicature Act, Ch. 66, 36 and 37 Vict.

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African Grain Marketing (Deductions) Ordinance, Cap. 246.

Agricultural Credits Ordinance, Cap. 142.

Agricultural Lands Ordinance, Cap. 101.

Agricultural Rural Marketing Board Ordinance, Cap. 99.

Bush Fires Ordinance, No. 14 of 1939, Supplement to the Laws of Northern Rhodesia, Vol. 1, 1946.

Grain Marketing Board Ordinance, No. 31 of 1940, Supplement to the Laws of Northern Rhodesia, Vol. 1, 1946.

Land and Agricultural Bank Ordinance, Cap. 249.

Maize Control Ordinance, Cap. 11.

Noxious Weeds Ordinance, Cap. 102.

Public Lands Acquisition Ordinance, Cap. 87.

Reserves and Trust Land (Adjudication and Titles) Ordinance, Cap. 267.

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Agricultural Lands Act, Cap. 292.

Co-operative Societies Act, Cap. 689.

Credit Organisation of Zambia Act, Cap. 353.

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English Law (Extent of Application) Act, Cap. 4.

Industrial Development Act, Cap. 674.

Lands Acquisition Act, Cap. 296.

Lands and Deeds Registry Act, Cap. 287.

Land (Conversion of Titles) Act, Cap. 289.

Land (Conversion of Titles) (Amendment) (No. 2) Act, No. 5 of 1985.

Land Survey Act, Cap. 293.

National Agricultural Marketing Act, Cap. 356.

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CHAPTER ONE

INTRODUCTION

BRITISH LAND POLICY IN NORTHERN RHODESIA

A. GENERAL

1. Constitutional History

(a) The British South Africa Company and Northern Rhodesia

The constitutional history of Northern Rhodesia (now Zambia) dates back to the 19th century when the British were in the process of expanding their influence through trade links with existing indigenous political structures in Africa. These trade links were forged by British merchants and entrepreneurs who entered into agreements with local chiefs. Thus, the British avoided "the arduous and expensive task of direct administration".[1] This approach was susceptible to serious weaknesses, notably that trade could be disrupted where a local chief might be incapable of maintaining effective control over his subjects.[2] In the last quarter of the century, therefore, the British resorted to establishing chartered companies which, although financed by private investors, were granted defined political and administrative powers to undertake the risks and expenses of colonisation. In the case of Northern Rhodesia the British South Africa Company (referred to, hereafter, as the BSA Company), was the chartered company responsible for the

administration of the country from 1890 to 1924.

The Royal Charter granted to the BSA Company on 29th of October 1889 confined the Company's operation to "the region of South Africa lying immediately to the north of British Bechuanaland and the north and west of the South African Republic and to the west of the Portuguese Dominions."[3] But when the BSA Company secured from Lewanika, Chief of the Barotse the 1890 concession which gave the Company a monopoly of mining and commercial rights over Barotse territory (north of the Zambezi), the British government extended the area of operation of the Company to cover the area north of the Zambezi river, excepting Nyasaland.

(i) North-Western Rhodesia

In 1894, by agreement with the British government, the BSA Company undertook direct administration of the British sphere of influence north of the Zambezi, but it was only in 1897 that Sir Robert Coryndon arrived in Barotseland as representative of the Company and British Resident. In 1899 the BSA Company received statutory rights of administration under the Barotseland North-Western Order in Council. Although the BSA Company could administer the territory, they were responsible for its administration to the British High Commissioner for South Africa. This arrangement was necessary because of an international dispute with Portugal over the boundary with Angola. It was felt advisable in the circumstances that the British government exercise closer control than would be the case if the Company was solely responsible.[4] The BSA Company concluded further treaties or

concessions with the Barotse Chief in 1900 and 1909 under which apart from placing the whole of the territory of the Barotse nation including all subject and dependent territory under the protection of the imperial government, gave the BSA Company exclusive mineral and commercial rights while the Company agreed to pay annually a fixed sum of money to be used for the general purpose of developing the country.

(ii) North-Eastern Rhodesia

While North-Western Rhodesia was approached from the south, North-Eastern Rhodesia was approached from the east. Following increased missionary activity in Nyasaland and North-Eastern Rhodesia the African Lakes Company was formed to open up trade in conjunction with the Missions. The African Lakes Company obtained three land concessions from various Chiefs in North-Eastern Rhodesia, but ran into financial difficulties, which led to its being taken over by the British South Africa Company in 1893. The BSA Company received "Certificates of Claim" from Sir Harry Johnston, then Governor of Nyasaland, who had been instructed by the British government to enquire into all claims arising from concessions or treaties with indigenous chiefs within Nyasaland and in North-Eastern Rhodesia. Its claim to land other than that which it had obtained through the African Lakes Company was, however, challenged by the Mozambique Goldland and Concessions Company which had acquired concessions obtained from Chief Mpezeni of the Ngoni, from a German known as Karl Wiese. In settlement, the BSA Company conceded to the Mozambique company mineral and land rights to a block of ten thousand square miles around Fort Jameson

(Chipata) in return for shares in a company known as the North Charterland Exploration Company, established to exploit the concession.

In 1894, the British government confirmed the concessions in respect of which "Certificates of Claim" had been issued. Six years later, the BSA Company received statutory powers of administration over North-Eastern Rhodesia, under the North-Eastern Rhodesia Order-in-Council of 1900. The Company could legislate for the territory, but such legislation was subject to the approval of Her Majesty's Commissioner and Consul-General for Nyasaland. This arrangement continued until 1909, when, on account of preparations which were being made to merge the two countries, the power of the Governor of Nyasaland was transferred to the High Commissioner for South Africa under the North-Eastern Rhodesia Order-in-Council of 1909.

In 1911, the two territories were amalgamated into Northern Rhodesia by the Northern Rhodesia Order-in-Council of 1911.[5] The general administration was conferred on the BSA Company. The appointment by the Company of an administrator had to be approved by the Secretary of State for colonies. The High Commissioner for South Africa was authorised to make, alter or repeal proclamations for the administration of justice, but in exercising this function he was able to take into account any suggestions or requests of the BSA Company. The Order-in-Council had the effect of applying to Northern Rhodesia the common law of England, the doctrines of equity and the statute law in force in England on the 17th of August 1911, "except so far as such law may be inapplicable or may be modified by any other

Order-in-Council or Proclamation".[6] The introduction of English law was in contrast to Southern Rhodesia where Roman-Dutch law was imported from South Africa.[7]

(b) Northern Rhodesia Protectorate

At the end of the war of 1914-1918, the termination of Company rule in both Southern and Northern Rhodesia came under consideration. The BSA Company had extended the railway line, along which the majority of European farmers were to settle, across the country and linked it to the Congo railway in 1909. But the few European settlers in the country felt that they had a right to participate in the running of government. An Advisory Council consisting of five members elected by settlers had been established in 1917. This Council had neither legislative nor executive powers. When in 1920 the BSA Company sought to impose income tax the European settlers contended that taxation could not be rightfully imposed without the consent of the elected representatives of the settler community. They demanded from the British government a number of reforms by which greater powers would be vested in the Advisory Council.[8] For its part, the Advisory Council, in a resolution passed in 1920, suggested that the question of the nature and extent of mineral and land rights claimed by the BSA Company should be referred to the Judicial Committee of the Privy Council.

The BSA Company which had previously been a party to a similar dispute with settlers in Southern Rhodesia had no desire to have the issue referred to the Privy Council.

Under the Devonshire Agreement of 1923, the BSA Company agreed to receive half of the net proceeds of all alienations of land in North-Western Rhodesia until 1965. The Company retained the three freehold areas acquired from the African Lakes Company in North-Eastern Rhodesia. The Company also retained, exclusively, all mineral royalties. Company rule ended in Northern Rhodesia on 1st April 1924 and Northern Rhodesia became, like Nyasaland, a Protectorate administered by a Governor with the assistance of senior executive officials. A Legislative Council consisting of a minority of elected representatives of the settlers numbering five and a majority of officials, numbering nine, was established. Official control was thereby maintained.

Constitutional progress after the assumption of direct administration by the Colonial Office reflected the ascendancy of settler influence over British policy as propounded by Lord Passfield in his Memorandum on Native Policy in East Africa. In 1938 settler representation in the Legislative Council was at par with the number of officials, and by 1945, the settlers had attained a majority on the Legislative Council.[9] The effect of this progress was to reduce the role of the British government as trustee of the African majority who had no franchise in the Protectorate, and boost the impetus of settlers to struggle for self-government. The power of the settlers was to be used effectively in the promulgation of certain legislation designed to thwart African advancement and forestall competition.

(c) The Federation of Rhodesia and Nyasaland

As early as 1915, the idea of uniting Northern and Southern Rhodesia had been contemplated by the directors of the BSA Company. Such a union would, the BSA Company felt, reduce administrative costs. In November 1927, the Secretary of State appointed a Commission chaired by Sir E. Hilton Young to enquire into the desirability of federation or some other form of closer union, not with Southern Rhodesia, but with the three East African countries - Uganda, Kenya and Tanganyika. In its report of 1929, the Commission stated that while closer union was possible among the three East African countries, Northern Rhodesia and Nyasaland should not be included because of the absence of communication and trade links with the East African territories.[10]

Attention was thereafter focussed on closer association of Northern Rhodesia to Southern Rhodesia and Nyasaland. The Bledisloe Commission of 1936 appointed to enquire whether and if so what form of closer co-operation between the Rhodesias and Nyasaland was desirable reported that all the three territories would benefit from co-operation, but ruled out amalgamation as Africans in the north feared that the restrictive native policy in Southern Rhodesia would apply to them.[11] A meeting of delegates from the three countries at the Victoria Falls in 1949 advocated a federation but the Labour government in Britain was reluctant to give their approval as they were doubtful as to the extent to which a federal government would advance African interests.[12] When the Conservatives came to power in 1951, the new Secretary of State, Mr. Oliver Lyttelton

was determined to have federation established. A series of conferences and discussions at which African objections were swept aside resulted in the passing of the Federation of Rhodesia and Nyasaland (Constitution) Order-in-Council of 1953 and the Federation came into being on the 3rd of September, 1953.

(d) The Emergence of Zambia

In Northern Rhodesia, the economic benefits from federation proved to be illusory. This was due to unequal distribution of wealth among the territories,[13] and also to the fact that the country had no authority to fix its own rate of income tax. There was no means by which Northern Rhodesia could reduce the flow of mining royalties and dividends which were invested in Southern Rhodesia and South Africa.[14] During this period, African disenchantment increased and political parties in both Northern Rhodesia and Nyasaland acquired formidable support from their fellow Africans. The pressure from African political parties coupled with European agitation in Southern Rhodesia for Dominion status thwarted the continuity of federation. The elections held following the revision of the Constitution in 1962 brought self-government under an African majority, and on 24th October 1964, Northern Rhodesia became independent and officially assumed the name of Zambia.

2. Sources of Law

There are four main sources, local statute law, English law, African customary law, and local and foreign case law.

(a) Local Statute Law

Local statute law consists of enactments formerly referred to as "Ordinances" and "Proclamations" but since independence called "Acts", passed by the National Assembly and assented to by the President.[15] Local statute law also includes statutory instruments made by any person or authority to whom Parliament has, for specified purposes delegated legislative powers in terms of Article 81 of the Constitution of Zambia of 1973. Not all the laws in the Laws of Zambia were enacted by Zambia's National Assembly, many had already been in force as ordinances, but were continued in force after Zambia's independence in order to achieve a desirable level of stability.[16] There can be no doubt that local statute law constitutes the major source of law. Measures which have been taken to promote new development ventures, whether in industry or agriculture, have found their legal expression in local legislation.

(b) English Law

English law has been introduced by the English Law (Extent of Application) Act,[17] the British Acts Extension Act,[18] the High Court Act,[19] and the Subordinate Courts Act.[20]

The English Law (Extent of Application) Act provides

that subject to the provisions of the Zambia Independence Order, 1964 and to any other written law, the common law, the doctrines of equity and the statutes which were in force in England on the 17th of August 1911, and any statutes in force in England passed after that date but applied to Zambia under any Act, shall be in force in the Republic.[21] Despite the generality with which English statutes are made applicable under the Act, both the High Court and the Subordinate Courts Act contain provisions which limit their application to the extent that local circumstances permit. The Courts are empowered to "construe the same with such verbal alterations, not affecting the substance, as may be necessary to make the same applicable to the proceedings before" them.[22] There are other limitations to the application of English statutes. Where an English statute, in force prior to 1911, covers the same subject matter as a local Act, the provisions of the local Act must prevail to the extent of any inconsistency between the two. Further, if a local Act purports to establish a comprehensive system, the English Act may be wholly inapplicable even if it is not specifically inconsistent in all its provisions.[23] Post-1911 statutes do not apply unless they are specifically adopted under the British Acts Extension Act.[24] The schedule to this Act specifically cites eleven British statutes which have been adopted.[25]

Certain Acts also make British Acts applicable. Thus section II(1) of the High Court Act provides that the High Court's jurisdiction in matrimonial causes "shall, subject to this Act and any rules of court be exercised in substantial conformity with the law and practice for the

time being in force in England".

(c) Customary Law[26]

Customary law plays a very significant part in the resolution of disputes arising between and among Africans in Zambia. It covers many aspects of human activity particularly in the traditional sector, of which one of the most important is the enjoyment of land rights. Original jurisdiction is vested in the Local Courts and the Subordinate Courts, but the higher courts - the High Court and the Supreme Court - have appellate jurisdiction. In spite of the wide scope within which customary law applies, there are some limitations imposed by statute. Under both the Local and the Subordinate Courts Acts, customary law should only be applied in civil cases to which the parties are Africans. Even in such cases, moreover, customary law will not be applied if it is contrary to any written law or repugnant to "justice, equity and good conscience" under the Local Courts Act,[27] or repugnant to "natural justice or morality" under the Subordinate Courts Act.[28] The repugnancy test, intended to rid customary law of any abhorrent aspects, has rarely been used.[29]

In terms of its contribution to modernization, customary law, although proven to have the flexibility to adapt to changing circumstances or social values, is still widely believed to be incapable of initiating development. By its very nature it cannot form a basis for radical change in the social and economic order.

(d) Local and Foreign Case Law

As a common law country, Zambia has followed the doctrine of stare decisis with this limitation that decisions of colonial and Federal judges have been treated cautiously. With respect to post-independence decisions the only court not bound by any decision including its own is the Supreme Court for Zambia. The next in the hierarchy, the High Court for Zambia is bound by decisions of the Supreme Court. The lower courts - the Subordinate Courts and, at the base, the Local Courts are bound by all decisions of the higher courts. Foreign case law is not binding, but of persuasive authority only. Foreign case law has been instructive in many instances in which the interpretation of a similar local legislation, including the Constitution of Zambia, has been in issue.

Local and foreign case law, like customary law, does not play any significant role as a means of initiating economic change. Although judges may be said to make law, their ability to use this power to initiate economic change in the absence of a specific statute designed to achieve particular development goals is very limited.[30]

In conclusion, therefore, so far as agricultural development is concerned, the most important source is local statute law.

3. Geography

(a) Location and Population

Zambia, a landlocked country totalling in extent 291,000 square miles (753,000 sq. km), lies within latitude 8 to 18 degrees south and 20 to 33 degrees west. It shares its borders with seven countries: Botswana, Zimbabwe and Mozambique in the South; Malawi and Tanzania in the east and north-east; Zaire in the north and Angola in the west. The 1969 census recorded a total population of just over four million people, but the 1975 projection for 1984 was above five million.[31] This population is unevenly distributed, with large concentrations of people in the industrial centres along the old line of rail, the agriculturally favourable areas in the Southern and Eastern Provinces, and along the lake shores in the Northern and Luapula Provinces.[32] Vast areas are, hence, sparsely populated.

(b) Soils

The spread of good agricultural soils is limited mainly comprising the larger tracts of fertile upper valley soils lying in the Kafue basin of the Central and Southern Provinces, and the valley areas of river tributaries feeding the Luangwa in the east. It is in these areas that commercial farming has developed. The sandy soils of the North-Western Province have little fertility except for the Zambezi flood plain. The soils on the lake shores and swamps in the Northern and Luapula Provinces support relatively heavy concentrations of population, but the rest of the plateau soils are poor on account of the leaching

effect of heavy rainfall.[33]

(c) Rainfall

The most notable feature of the distribution of mean annual rainfall is the general decrease in amount from north to south which is attributed to the shorter time the south is influenced by the Inter-Tropical Convergence Zone.[34] Superimposed on this pattern are areas of higher rainfall resulting from above average altitude or from proximity to lakes and swamps. The northern half of the country has annual totals ranging from 40 to 60 inches (1015-1520 mm), with the maximum, north-west of Lake Bangweulu.[35] The Southern half has totals between 25 to 40 inches (635 to 1015 mm).[36] Rainfall coincides with the summer period - October to April, and the length of the growing season varies from an average of 170 days in the north to 130 days in the south.[37]

(d) Agricultural Systems and Land Use

These are two basic agricultural systems, the commercial, and the traditional or peasant system of production. Between the two is a growing number of the so-called "emergent farmers", who are progressing from the peasant system into the commercial system, but are not yet fully developed to qualify as commercial farmers.[38] It is difficult, however, to distinguish between marketed peasant crop surpluses and small scale commercial production because records are inadequate. Official production figures refer

only to amounts sold to marketing organisations at their collecting points and not what may have been sold privately.[39] Despite data limitations, a broad geographical pattern, more or less consistent with agricultural State Land (formerly Crown Land) has emerged as depicting areas of commercial production.[40] In terms of land use, the total geographical area being used for commercial production represents only a tiny proportion of the total national area.[41]

The traditional sector accounts for roughly seventy per cent of the population, which is mainly dependent on peasant or subsistence agriculture. Shifting cultivation is practised although the nature varies from the semi-permanent system in the Southern, Eastern and Luapula where population pressure in certain areas has engendered more permanent settlement, and the more active system in the sparsely populated areas in the Central and Northern Provinces. This mode of production is being modified by crop rotation and there is little evidence of villages being shifted to other areas over a short span of time. On the assumption that under the traditional systems, the average land requirement is about one acre per head per annum, Siddle calculates the total area used for subsistence agriculture as 5000 square miles or 14.5% of the country's total area.[43] In any given year, therefore, over 80% of the land is either lying fallow or being used for non-agricultural purposes such as mining, forestry, game reservation, etc.

(e) Crops

In the order of importance, maize is the most popular crop, followed by sunflower, wheat, rice, soya beans and ground nuts. The figures in official statistics only reflect marketed produce and not what is locally consumed particularly in the traditional sector. Virginia tobacco, once a major foreign exchange earner, has dwindled. It is still being promoted by the Tobacco Board of Zambia, but current production is only sufficient for local consumption.[44] It is conceded that improvement of the tobacco industry requires a considerable provision of agricultural credit and extension services.[45]

It is difficult to specify the areas in which crops are grown because, particularly in the case of the traditional sector, a wide variety of crops are grown for consumption notably maize, tobacco, rice and various kinds of vegetables. But in the commercial sector, maize and tobacco are grown largely along the old line of rail, sunflower in the Southern and Eastern Provinces, and soyabeans in the Southern, Central and Lusaka Provinces. In terms of self-sufficiency, the country has been plagued by shortfalls on all the major crops.[46] The recurring droughts have taken the major part of the blame, particularly in the case of maize, but many other factors account for low productivity, among them the policy relating to agricultural land and inadequacies of the credit and marketing infrastructure discussed in the following chapters.

As to which sector contributes the larger proportion of marketed produce, rationally the small commercial sector contributes comparatively more. But unlike the Colonial period in which the commercial sector occupied an

unassailable position, the present situation is that the combined efforts of the small scale or emergent farmers, and the peasant farmers has resulted in the reverse.[47] This could be explained by the fact that many commercial farmers left the country in the wake of independence and after[48], but no less important has been the overall effect of government efforts through extension, road construction, and rural credit, although, not entirely successful.

B. THE DUAL SYSTEM OF LAND TENURE AND LAND ADMINISTRATION

1. General Policy: The Dual Economy

The Northern Rhodesia Protectorate, like other Protectorates and Colonies in Africa produced raw materials for British industry and served as a market for the finished product.[49] Investment was concentrated in the sector which produced raw materials whether as minerals or agricultural produce. This sector geographically comprised the copper belt, with its mineral deposits, and the agriculturally favourable areas along the old line of rail. This pattern of investment led to a truncated form of development by which a highly developed export-oriented economy flourished in urban areas at the expense of the rural economy which was

largely neglected, if not positively impoverished.[50]

As the mining sector began to dominate the economy, the question of labour assumed great importance. It is true that Africans in Northern Rhodesia had already been used to migrating to Southern Rhodesia and South Africa in search of work, but their numbers were small compared to the exodus which took place after the opening up of the mines in Northern Rhodesia. Labour migration has largely been attributed to taxation introduced in North-Eastern Rhodesia in 1900 and in North-Western Rhodesia in 1901. There is a general consensus that taxation served to induce Afrians to take up wage labour. There were, however, some other pull factors attracting Africans to urban areas. The desire for economic gain played an equally important role in inducing men to leave their villages in search of work.[51] That taxation was the major cause is evident in that migration was more intensive in areas which were not agriculturally viable, than the reverse.[52] Whatever the causes of labour migration, its effect was to deprive the villages of necessary manpower and thus weaken the agricultural base in the rural economy.[53]

The creation of two separate economies was not only the result of the pattern of investment but also the land policy pursued. Both the BSA Company and the Colonial government were interested in generating profits in the short-term, hence their perception that development could best be achieved through the encouragement of European settlers.[54] The land policy pursued resulted in the carving out of the best lands for the European settlers and, in some cases, the movement of Africans into land reserved for them which in

many cases were not economically viable. By so doing, the dual system of land tenure emerged. The settler community was governed by the English land tenure system, while the Africans continued to be governed by their own customary land tenure system. This land policy further reinforced the dual economy in the sense that the Colonial government could then clearly identify the areas where further investment in infrastructure to benefit European farmers could be directed.

With the emphasis on the mining industry, the role of the agricultural sector was to provide sufficient food surplus to feed the mining community.[55] Given this restricted objective, it is no wonder that the emphasis, prior to 1947, was on European farmers. Throughout the pre-1947 period and in spite of the theory of "paramountcy of native interests" espoused by Lord Passfield in 1930,[56] government concern was with assisting European farmers. With respect to African farmers, government attention was focussed on control of soil erosion and the prevention of depletion of soil fertility arising from increased population pressure.[57]

The Ten-Year Development Plan approved by the Legislative Council in February 1947 signified the beginning of change in policy. It was acknowledged in this plan that the country had a small immigrant population with a high standard of living confined mainly to the old railway line and a much larger indigenous population scattered throughout the country but enjoying a low standard of living. In view of this disparity, it was felt that, while the aim of the Development Plan had to be the same for both sections -

maximum development possible within the plan period - the methods to be employed in bringing about development would have to be different as between the two sections. The Development Plan had three major objectives: (i) to give on a modest scale the bare essentials of social and economic services to both communities; (ii) to encourage development of the natural and potential assets of the country, and (iii) to assist the African population to develop itself under the Native Authorities through better health and increased industrial and agricultural skill.[58]

To encourage African development each province was to have a provincial team consisting of senior members of each department under the chairmanship of the Provincial Commissioner. Within each province were to be established "development areas" controlled by the Provincial team. Development Areas were in turn to have field staff to implement development schemes. The Plan also called for the establishment of an organisation, the Native Development Board, which was to monitor and supervise the implementation of the Development Plan.

The order of priority was the preservation of land, improvement of diet leading to an ultimate improvement in economic conditions and in time a more concentrated distribution of population. To cater for such diverse aims, Development Area Teams were to consist of an agricultural officer responsible for general direction of agricultural work and the supervision of agricultural experiments; agricultural supervisors, in charge of experimental stations and extension work; and at the bottom of the scale, African rural assistants to carry out instructions. Development

areas were to be selected on the basis of population strength, consequently areas of sparse population were not to be served. The Plan envisaged the establishment of ten development areas.[59]

With regard to European agriculture, at the time of the plan, European farmers were already being served by an agricultural extension officer. By 1944 a research station had been opened near Lusaka to deal specifically with problems of European wheat farming.[60] The planners believed that the European farming industry deserved wider agricultural services than were then available and that "wise expenditure on European agriculture is likely to yield greater returns in the improvement of territorial finances than is equivalent expenditure on African agriculture".[61] It was generally accepted that the problems of the European farmer were more economic than agronomic and that the need for advice and assistance was greater in the pastoral than in the agricultural side of the industry. Provision was made for further expansion of research and advisory work.[62]

The Ten-Year Development Plan was revised in 1948, 1951 and finally in 1953. The impact of these revisions and the resulting ratio of agricultural expenditure to the overall estimate of expenditure has been amply demonstrated by Dodge who concludes that, although the planned expenditure increased fourfold, the amount spent on agriculture, economic, and rural development decreased.[63] The Federal government's five-year plan did not alter the trend in favour of agriculture. For all the three territories comprising the Federation, the sum allocated to agriculture and rural development amounted to only eight per cent of the

total expenditure.[64]

The creation of the dual economy and the emphasis on European agriculture explains the evolution of a dual system of land tenure. What follows is a brief account of the evolution of Colonial land policy conveniently divided into Colonial policy with regard to Native Lands and Colonial policy with regard to what, for lack of a better term, is designated as Alienated Lands, the land reserved for European settlement, and its bearing on agricultural development. As separate credit and marketing facilities were created to serve farmers in the two distinct areas, these two aspects, indispensable to agricultural development, are discussed under the two headings.

2. Native Lands

Colonial land policy was influenced by two major factors. The most important was the power of the small population of European settlers who exercised tremendous influence through their representatives on the Legislative Council. The other factor was, ironically, the experience and personality of the encumbent governor. The contrast between Sir Herbert Stanley and Sir Hubert Young stands out clearly as having been the determining factor in the choice between the Reserves and Trust land. Stanley who had been Imperial Secretary for South Africa was known to be sympathetic to settlers.[65] His experience in South Africa, with its policy of racial segregation, influenced him not

only in the choice of introducing native reserves on the Southern Rhodesian and South African pattern, but also in the manner in which this policy was implemented. Young, whose experience was derived from Nyasaland, was more inclined towards greater protection of African interests through the concept of trustland. Due to the above contrasts Colonial land policy in Northern Rhodesia followed first, the example of Southern Rhodesia where under the Land Apportionment Act[66] the best lands were allocated to Euro pean settlers, and later the Nyasaland example, where under the Native Trust Land Order-in-Council of 1936, the whole of the unalienated land was declared Native Trust Land to be administered for the benefit of Africans.[67]

(a) The Policy of Native Reserves

The policy of native reserves dates back to the period of the BSA Company administration. In the populated areas of Eastern Province (then referred to as the East Luangwa District) competition between European and African farmers forced the former to press the BSA Company to create native reserves. They were supported by the North Charterland Exploration Company which accused the BSA Company of hindering development by refusing to alienate land on which Africans were settled to European farmers. In 1913, after a meeting between BSA Company officials and local chiefs, it was agreed that reserves should be set up in the Fort Jameson area.[68]

The establishment of reserves obviously meant delineation of land between what was to be available for

European settlement and what would be recognised as belonging to Africans. The chiefs in the Eastern Province had agreed to the policy provided they got land of good quality. According to Gann, the soil selected varied in quality ranging from "very barren country to good, cultivable land, the allocation being made on the basis of 11.75 to 34 acres per head of native population depending on the country selected."[69] Three reserves were thus created, but they were not backed by any Order-in-Council. In the meantime, the demand for the creation of reserves also grew on the railway belt where indigenous farmers were beginning to compete with European farmers for the local market. Palmer observes that the intention on the part of Europeans was "to push Africans out and make way for incoming Europeans".[70]

The process was accelerated by Sir Herbert Stanley as the first governor after the country had become a Protectorate and the Colonial Office had assumed direct administration in 1924. Stanley believed that European settlement was indispensable to economic progress. European settlers should be welcomed because they offered employment to Africans who were thus enabled to pay taxes. They also provided an example of better methods of farming to the local Africans. He advocated immediate action to create reserves in the East Luangwa District (the Eastern Province) and along the old railway line in the supposed interests of both Europeans and Africans. Any further delay would be detrimental as, "the present uncertainty cannot but produce a feeling of insecurity among the natives and have an unsettling effect on their minds, since to them it is a

question of paramount importance to be assured of a sufficiency of suitable land for their permanent occupation".[71] He praised earlier efforts by the North Charterland Exploration Company to set up reserves, but these, he said, were insufficient. Between 1924-1927 he set up reserves commissions in the three areas mainly affected by European settlement - the line of rail, the Northern Province and the Eastern Province. Under their terms of reference, the Commissions were to make provision for reserves "suitable and sufficient for the agricultural, pastoral, industrial and other requirements of the natives ... including in all cases a fair and equitable proportion of springs, streams or permanent water."[72] The Commissioners were also directed to have regard not only to "the present requirements of the natives, but also to their probable future necessities consequent upon the spread of white settlement to areas now occupied by natives and upon probable extension of those requirements by reason of the natural increase of population".[73]

(i) The Native Reserves Commission (Railway Line)

The Native Reserves Commission for the Railway Line sat in 1926.[74] It framed its resolutions in accordance with the following criteria:

"1. Reserves are to be situated in country away from the railway line, but where possible, with "lanes" or "corridors", giving access to it.

2. They are to be homogeneous and not intermingled with areas of European settlement.

3. They are to be tribal so that no part of a tribe is cut off by intervening land from the remainder.

4. They are to be permanent and perpetual.

5. They are to be suitable and of sufficient size.

6. They shall be an indivisible part of a general scheme for the improvement and civilisation of the native."[75]

The Commission estimated the African population to be 268,000 and proposed sixteen reserves totalling 24,874,000 acres, thus giving ninety-three acres per head. The remaining twenty-three and half million acres was to be Crown Land. The Commission urged that government should immediately move Africans into the reserves instead of waiting until the Crown Land reserved for European settlement is taken up as this would encourage false hopes in Africans which might turn into bitterness when the time for their movement came. No provision was made for compensating Africans for their houses and fields on the grounds that they would be sufficiently compensated by the security they would gain in reserves. The proposed reserves were formerly designated in the Native Reserves (Railway Line) Order-in-Council of 1929.

(ii) The Tanganyika District Native Reserves Commission

What was once the Tanganyika District (now Mbala and Isoka Districts) had been acquired by the British South Africa Company from the African Lakes Corporation.[76] It comprised an area of close to three million acres. The tiny population of European settlers numbering forty three could be broken down into twelve missionaries, eleven women, nine male farmers, eight officials and three traders - with the farmers dependent mainly on cotton and coffee growing. The

Commission[77] which sat in 1927 observed that:

> "In selecting the reserves we are recommending we have endeavoured to adhere to the principle that they should be tribal or for a portion of a tribe. We have made them generous in size allowing for future economic development. We are causing as little movement of the natives as possible and have done our best to keep the Paramount Chief and more important chiefs on their own lands."[78]

The Commission proposed thirteen reserves totalling about eight million acres for an African population of 106,513, a ratio of roughly 74.8 acres per head. More than five million acres were proposed as Crown Land for future European settlement. No compulsion to move Africans into reserves was proposed, however, but again compensation was said to be unnecessary. The reserves were formally designated in the Native Reserves (Tanganyika District) Order-in-Council, 1929.

(iii) The Native Reserves Commission, East Luangwa[79]

At the time this Commission sat in 1924, some "unofficial" or "provisional" reserves had already been created by the BSA Company. These reserves, numbering thirteen, were taken into account by the Commission.[80] The Commission stated in its report that it had been guided by the principles that the reserves would involve minimum movement of the African population and that there should be little disorganisation in any single tribe or unit.[81] The Commission recommended nine reserves totalling 2,149,120 acres for an estimated African population of 151,364 (an average of 14.2 acres per ahead). Africans were given five years within which to move into the reserves. No compensation was payable. The Native Reserves (East

Luangwa) Order-in-Council was made in 1928.

(iv) Evaluation of the Native Reserves Policy

The Colonial government had embarked upon a policy of native reserves "in conscious imitation" of the Southern Rhodesian practice, but in quite dissimilar circumstances.[82] The justification for the policy has been described either as an effort to safeguard the interests of Africans in the wake of European immigration,[83] or an attempt to deprive Africans of their best lands and grant the same to European farmers.[84] The manner in which it was implemented - immediate movement and denial of compensation, lend credit to the latter argument. One must, in fact, bear in mind that the motivation for the reserves policy was what Hellen calls "the settler dream", that is, the expectation that one fine day there would be an avalanche of European farmers, for whom provision had to be made in good time.[85] But as Palmer has observed, contrary to expectations "the 'settler dream' remained but a dream, and the majority of Europeans who entered the country after 1930 came as miners and not as farmers".[86] In effect, the "wholesale" movement of Africans from their lands into reserves was unjustified. Palmer concludes: "as the Europeans failed to come, the reserves became overcrowded and the 'silent lands' from which the people had been removed simply attracted the tsetse fly. Even official reports of a later vintage were highly critical of such an asinine policy".[87]

Overcrowding in Reserves was a result of gross underestimation of African land requirements bearing in mind the varying types of traditional modes of farming. Perhaps

the Commissions were not to blame, but rather the hasty and cavalier fashion in which they were constituted. There was no professional agriculturist on any of the three commissions, and no comprehensive report on soils, vegetation or agricultural systems was then available.[88]

The 1938 Commission of Inquiry into the Financial and Economic Position of Northern Rhodesia was very critical of the whole policy of native reserves. It reported that the reserves were inadequate in size and uninhabitable owing to, either, the absence of water supplies, or the presence of tsetse flies.[89] This observation was shared by the Land Commission of 1946 which laid stress on the fact that it was unnecessary to move Africans into reserves when, in fact, there was no demand on the part of Europeans, for the land left vacant. The Commission stated:

> "It is difficult to understand why in many parts of the country natives were compulsorily moved into the reserves in spite of the fact that there was no demand for occupation by Europeans of the areas left vacant. The result of this policy was to create a profoundly unsatisfactory situation in many of the reserves and to cause much unnecessary suffering and ill-will."[90]

It cited Mkushi (Central Province) as one of the areas where unnecessary suffering had been caused. The three reserves created in Mkushi had reduced the land available for African occupation by 64%, and inspite of the European population numbering only three in the whole district, nevertheless, Africans had been forced to move into the reserves with devastating consequences. In the words of the Commission:

> "The result is what might have been anticipated. In some of the areas, there have been actual famine conditions, and in many others the land has degenerated to such an extent that it will be useless for many years to come."[91]

The Commission went on to criticise the Reserves Commissions on the basis of the small size and the lack of agricultural potential of the areas recommended as reserves. With regard to the Lusaka district the Commission commented that the area allocated as reserve had been too inadequate, and expressed the fear that had Africans been moved into them, their fate would have been sealed. A fitting example of economic non-viability of the reserves cited by the Commission was the Tonga Reserve in Mazabuka, which the Commission described as "wild, stony, mountainous country with a few pockets of fertile soil in the valleys".[92] The Africans in this particular reserve faced such hardship, due to the absence of arable land, that they were subsequently permitted to return home. The same gloomy picture was painted of Northern and Eastern Provinces. In the Northern Province, it was apparent to the Commission that the 1927 Reserves Commission had overestimated the carrying capacity of the reserves and consequently the African land requirements. By 1931, there were complaints of overcrowding and some Africans began moving northwards into Tanzania.[93] In an attempt to alleviate land shortage, the government added one million acres of BSA Company land to the existing reserves.[94]

In the Eastern Province, conditions had so deteriorated with population densities of up to 240 per square mile in places, that drastic action was necessary. At the time, unfortunately, the government was involved in a dispute with the North Charter land Exploration Company over the price to be paid for the part of the Company's land which had been

turned into reserves. In 1940, the government was compelled by the need to increase reserves to obtain powers of compulsory acquisition, and the fear that the government would use this power caused the Company to agree to a settlement by which more than three and a half million acres were purchased by the government and added to the existing reserves.[95]

(b) The Policy of Native Trust Land

The appointment of Sir Hubert Young to the governorship of Northern Rhodesia in 1934 led to a swing in land policy from Reserves to Trust Land. Young had been Governor of Nyasaland (Malawi) where the concept of trusteeship was the mainstay of Colonial land policy. The Pim Commission stated in 1938 that the policy of native reserves had been a disaster. Young entertained the view that since, in respect of land, Northern Rhodesia was more comparable to Nyasaland than Southern Rhodesia, it should follow the example of the former.[96] In 1942, the Colonial Office agreed to accept Young's argument in favour of native trust land. By Government notice[97] all unalienated land was to be divided into Crown Land and Native Trust Land. Crown Land was to comprise all land "certified as a result of ecological survey to be suitable for European development and all land known to contain mineral resources."[98] Native Trust Land was to be "set apart in perpetuity for the sole and exclusive use and occupation of the Natives of Northern Rhodesia".[99] In future, if at all desirable, the Native Reserves might be merged with the Native Trust Land. The

notice also proclaimed with the exception of land already alienated, the whole of the Northern and Eastern Provinces and Serenje and Kasempa (districts) to be Native Trust Land "without further inquiry".[100] Palmer explains that these were areas which had all along been conceived as African land as no concessions had been granted with respect to them.[101] For the rest of the country a Commission[102] was set up to apportion land between Crown Land and Native Trust Land.

The Land Commission preferred recommending large homogeneous blocks to numerous scattered settlements and disclosed that it had made every attempt to make full provision for the agricultural requirements of Africans. The Commission added:

> "We cannot agree with the suggestion made by some European witnesses that the existing reserves would be adequate if properly used, though we appreciate that much could be done to increase the carrying capacity by improved methods of agriculture, water development and encouragement of early burning."[103]

The Commission felt strongly, that on account of the poor quality of much of the land in Northern Rhodesia; the poor methods of agriculture employed; and the need to provide for future population growth; "without agricultural control and adequate instruction in agricultural methods, no amount of land which can be set aside will be permanently sufficient for the needs of the African population."[104] The Commission in all allocated a hundred million acres of formerly unalienated Crown Land to Native Trust Land, and taking the cue from the earlier mistake of the Reserves Commissions, stipulated that Africans should not be moved from Crown Land unless such land was immediately required for European

occupation, unless their "presence is actually harmful to the land" for example by widespread burning of forests.[105] Thus, eventually Northern Rhodesia followed the Nyasaland example rather than Southern Rhodesian practice.[106] The 1947 Native Trust Land Order-in-Council officially declaring Native Trust Land was a replica of the Nyasaland Order-in-Council of 1936.

(c) Position of Non-Natives

The issue as to whether or not non-natives should be permitted to occupy land in the Reserves and Trust Land had bothered Colonial officials and settlers alike. The presence of non-natives (Europeans, Asians, etc.) was not necessarily undesirable, after all, Africans could learn improved methods of farming from the example of European farmers. There was also the question of traders and missionaries whose activities would be greatly hampered if they were distanced from Africans they intended to serve. Some accommodation for the traders, evangelists and even some European farmers had to be found within the framework of the Reserves and Trust Land policies.

Under the policy of Native Reserves, although the real intention was to apportion land between Africans and Europeans, some limited provision was made for non-native settlement in reserves. While by Article 6(1) Native Reserves were vested in the Secretary of State for Colonies and "set apart for the sole and exclusive use of the natives of Northern Rhodesia", provision was made by which the Secretary of State could alienate land to non-natives for

limited periods varying according to the purpose for which the land was required. Ninety-nine years was the maximum in the case of land required for public purposes; thirty-three years in the case of missionaries and charitable organisations, and five years in any other case.[107] The only safeguard was that such dispositions had to be made after consultation with the rural council within whose area the land was situated.

These limited provisions were adequate because there was no demand by Europeans to be permitted to settle in the Reserves. With respect to Trust Land the position was different however. In the first place there was profound opposition to the policy of native trust land by European settlers who, through their representatives in the Legislative Council argued that the land proposed was too big to be perpetually tied in African hands.[108] In order to placate the opposition, Sir Stewart Gore-Browne, the representative for African interests in the Legislative Council, after discussions with the opposition, proposed to the government that the opposition could be satisfied if a clause to the effect that 6,000 acres in each province would be made available for non-native occupation after determination by the Secretary of State that such alienation was in the general interests of the community as a whole, was included.[109] The Governor, Sir Waddington, however, objected to inserting any figures concerning acreage and the Order-in-Council of 1947 which empowered the Secretary of State, when it appeared to him to be in the general interests of the community to grant rights of occupancy to non-natives in Trust Land, omitted any mention of

acreage.[110] The rights of occupancy could be for a term of years but were not to exceed 99 years.[111] A right of occupancy could also be exchanged for a comparable piece of land in Crown Land. Despite these overtures, some European settlers were still dissatisfied particularly with the limitation of the period to 99 years.[112]

On the 3rd of December, 1947, the Secretary of State issued directions under section 5(1) of the Native Trust Land Order-in-Council to the effect that all applications for rights of occupancy should be referred to him for approval.[113] The Governor, Sir Gilbert Rennie, explained that previously small areas (of what became native Trust Land) not in excess of one acre had been let to non-natives or to natives of other areas as trading plots. These leases had usually been for periods of one month but renewable automatically, with provision for termination by a month's notice on either side. These leases were later converted to rights of occupancy.[114] From 1936 to 1948, 140 such leases were granted throughout the country.[115] On the 20th of November, 1948, the Secretary of State made further directions permitting the grant of rights of occupancy for small holdings, not in excess of five acres, without reference to him so long as such grants had the approval of the relevant Native Authority.[116]

(d) Adjudication of Title Proposals

(i) The Native Land Tenure Committee Report

As non-natives were being granted leases in the

Reserves and rights of occupancy in Trust Land, the need for initiating reforms to customary land tenure and introducing a registration of title system for Africans in these areas was being considered. On the 27th February 1945, a Native Land Tenure Committee chaired by Sir Stewart Gore-Browne, the representative for African interests in the Legislative Council, was appointed by the Governor to:[117]

> "a) Investigate the systems of land tenure and inheritance prevailing in the native areas of the territory, with particular reference to their applicability to the conditions brought about by changes in the social, political and economic lives of the inhabitants;
>
> b) Make recommendations as to any action which should be taken by government and Native Authorities, to adapt such systems to the present, and, so far as they can be foreseen, the future needs of the people; and
>
> c) Make recommendations as to the machinery which it may be desirable to establish for the purpose of directing the future investigations into native land tenure and of advising government on policy with regard to native land tenure."[118]

The Committee summarised customary land tenure in Northern Rhodesia as "communal ownership by the tribe, vested in the Chief, coupled with an intensely individual system of land usage". Every individual member of the tribe, the Committee found, had the right to as much arable land as he needed for himself and his family, and so long as he made use of this land, he enjoyed "absolute legal security of tenure".[119] A more detailed discussion of customary land rights is contained in the third chapter, but what is necessary at this stage is to determine why the Committee was so concerned with customary land tenure at all after their finding that customary law offered "absolute legal security

of tenure".

The need arose from a desire to pacify ex-soldiers (or ex-Askaris as they were called) and some educated Africans who wished to break out of the traditional village system. The Native Land Tenure Committee conceded that the demand for farms by soldiers and educated Africans was not necessarily based on a desire to adopt new methods of agriculture, but the desire to establish permanent residence "away from the noise and other inconveniences inseparable from ordinary village life", and possibly plant fruit trees and keep livestock. This was interpreted as a desire for improved living conditions which could not be realised by Africans at the time because of a government rule (for administrative convenience) that ten taxpayers constitute the minimum number required to establish a village. The Committee recommended the introduction of a "parish" system where people would be permitted to reside within a given area, a "parish", without necessarily having to get themselves together and form a village.[120]

The Committee then addressed itself to the welfare of the few educated Africans and ex-soldiers whose desire was to enter commercial farming. Within their parishes, Africans could, if they wanted, produce enough to sell, but with the exception of reserves within reach of the copper belt, such areas were generally too remote from markets for anything but subsistence agriculture. It therefore recommended the establishment of settlements near the copper belt, the old railway line towns and Eastern Province. Such settlements were to consist of blocks of farms properly demarcated and under strict agricultural control. Capital,

of at least ten shillings per acre and adequate farming experience, were to be essential for those who were to be participants in these settlement schemes.[121] In view of their stringent qualifications, the demand for farms under these suggested schemes could not have been high. Strangely absent from the Committee's recommendations were comments on the nature of land rights to be offered in respect of the farms. It is perhaps for this reason that their recommendations as to parishes and settlements remained on paper.

(ii) The Native Land Tenure Sub-Committee of the Native Development Board Report

The above recommendation for separate settlements echoed an earlier suggestion by the Native Land Tenure Sub-Committee of the above Board appointed on October the 5th of 1942 to "consider the conditions under which Africans might hold land individually".[122] This Sub-Committee had gone further and considered the form of tenure in African settlements. It felt that it was essential to lay down and enforce definite conditions of tenure to ensure that land alienated to Africans could be utilised to the best advantage, and particularly, to guard against its misuse. In the Sub-Committee's opinion "such conditions could best be enforced under a form of leasehold tenancy in which the right is reserved to the Crown to terminate occupancy in the event of non-compliance with the covenants".[123] It then proceeded to lay down the conditions which should be contained in the leases, but recommended a period of thirty

years. The short leasehold period was desirable as "the prospective tenants are in a fairly primitive stage of development, but under the stimuli of individual tenure and European instruction will probably make rapid progress".[124]

(iii) The Land Commission of 1946

Successive commissions drew attention to the need to provide an alternative system of land tenure to cater for the agriculturally progressive African. Although falling outside its terms of reference, the 1946 Land Commission commented that in some parts of the country, notably, Southern Province, educated Africans were looking forward to land in tribal areas which they could occupy permanently.[125] As the Commission put it "one of the most difficult problems ... is that of the agriculturally progressive Africans who, not unnaturally, resent being placed too rigidly under the jurisdiction of a petty chief who may be much their inferior in intellect".[126] It went on to urge the government to investigate the question of land tenure for Africans. Similarly, another Commission[127] disclosed that in the Eastern Province, an African district official had urged the Commission to recommend the establishment of special settlements in which retired Africans who did not wish to return to their villages could settle.[128] The Commission recommended that the Agricultural Department be instructed to select and set aside two areas for African farms around Fort Jameson (Chipata). Such land should be alienated to carefully selected Africans under conditions that would ensure adequate agricultural control and the prevention of soil erosion.[129]

In none of these reports is there any discussion on the defects of customary land tenure. In fact, the impression is created that the Commissioners were more impressed by Africans whose only desire was to seek refuge from village life. Neither is there any detailed discussion as to what form of tenure should replace customary law. Some effort was made by the Native Land Tenure Sub-Committee to provide a guideline by suggesting leaseholds, but the other Commissions seem to have been motivated by the desire to have registered title without necessarily bringing about reform in existing systems of land tenure.

However, the Rural Development Working Party in its report of 1960 went a step further by urging land tenure reform where Africans demanded it. They argued that land tenure reform "will contribute an incentive to the farmer, stimulating necessary investment in agricultural improvement, greater productivity, conservation and land improvement".[130] They cited two major defects which rendered customary law inadequate for the purposes of agricultural development: the prohibition against sales of land (including the absence of formal title to land) and the rules of inheritance.[131] The prohibition against sales of land rendered less secure any transactions in land, presumably they had in mind mortgages. With respect to inheritance, as the argument went, under the matrilineal rules of inheritance (which applied and still apply to most communities in Zambia), the land passes on to the man's nephews, thus making it impossible for a farmer who has invested his capital to pass on the land to his son. They stated that the immediate concern was to grant formal title

in those areas where there was a demand for it, to people who were already in possession of land but whose claim to it arose under customary law. As to the interest which should be offered, the Working Party suggested freehold or something "as near to it as possible", but also expressed the wish that there should be control over the sale of land to people of different races or coming from different Native Authorities, particularly in the early stages.[132]

The government's reaction was to send two District Officers, Mr. A.C. North and Mr. J.C. Mousley, and two agricultural officers, Mr. P. Greening and Mr. I.H. Muchangwe to Kenya and Uganda to study land tenure developments there and advise it whether it should follow suit. In their report[133] the officers pointed out that conditions obtaining in certain parts of the country notably Southern, Central and Eastern Provinces would lead to the success of a system of registration of title. Among the factors the officers cited as an indication of readiness for registration were that a growing number of people were calling for reform; agriculture was in the process of being developed and marketing facilities were adequate; fragmentation was becoming apparent; enclosure, (a sign of individualism) had already began; and land sales were already taking place.[134] Further development, the officers argued, were "undoubtedly being handicapped by insecurity and a lack of capital, both of which could be remedied by registration of title and the creation of agencies to provide long and short-term credit on the security provided by title deeds".[135]

On the question of the mechanics for registration and

consolidation, although the officers found the Kenyan system "excellent and thoroughly suited to Northern Rhodesia", they nevertheless advised a departure from the system on the subject of survey standards.[136] The officers felt that the survey standards applied in Kenya, while necessary for urban residential plots where precision was critical, need not be applied in rural areas where land values and population pressures were lower. Another important factor considered by the officers (not emphasised in Kenya and Uganda) was the need to introduce regional and farm planning at the time of, or immediately after registration of title.[137] Planning was to involve the selection of the areas of good arable land and parcelling of the same into economic units for alienation to interested farmers, and the reservation of the rest of the land as communal grazing land.

(iv) The Native Reserves and Native Trust Land (Adjudication and Titles) Ordinance, 1962

As a response to the calls for land tenure reform by various commissions and government officials, the government passed the Native Reserves and Native Trust Land (Adjudication and Titles) Ordinance of 1962.[138] The Ordinance showed that the government was aware of the difficulty of applying registration processes country-wide, namely the disparity in levels of agricultural advancement; population strength; and patterns of agricultural land use, and thus followed the Kenyan example of making the application of the Ordinance dependent on local native authorities who were supposed to be in better touch with the feelings of their people.[139] Under section 3, a "superior

native authority" could recommend to the governor to apply the provisions of the Ordinance to its area, whereupon by notice in the gazette, the Governor would declare the area to be an adjudication area. The Minister would then appoint an adjudication committee consisting of nine members nominated by the relevant native authority. Thus local participation was encouraged. The Minister was also empowered to appoint advisers to the adjudication committee, if the native authority so requested, but they had no voting rights. It was then up to any individual African occupying land within the adjudication area to apply to the adjudication committee to "adjudicate upon his claim to have by native customary law sole and exclusive right to occupy such land" within one year of the date of publication in the gazette of the notice declaring the area an adjudication area.[140]

After the expiration of one year referred to above, the adjudication committee was required to give notice specifying the situation and limits of each area claimed by any person and fix a period (not less than two months) within which those with any adverse claims could make representations to it. Upon the Adjudication Committee being satisfied with any claim, it was to formally allocate the land to the applicant, and later when all claims had been considered, the Committee was to prepare a demarcation plan showing every parcel of land and the name of the person to whom it was allocated. On the basis of the demarcation plan, an Adjudication Record would be prepared and submitted to the Registrar of Lands and Deeds. The Governor would then grant certificates of title whose effect once granted,

would be the same as the certificates issued under the Lands and Deeds Registry Ordinance,[141] which applied to Crown Land. The Committee was permitted to make adjustments to boundaries to take into account access of certain parcels of land to roads, or effect consolidation of separate parcels of land, or for purposes of farm planning.[142] Any person who suffered loss on account of these adjustments was to be compensated by the other who had gained.[143]

With regard to the nature of rights conferred by the Ordinance on customary land holders, the Ordinance was silent. However, the provision that certificates of title offered under the Ordinance would have the same effect as the one issued under the Lands and Deed Registry Ordinance read together with section 17 of the Native Reserves and Native Trust Land Ordinance which says:

> "Save for the purposes of section 12 of this Ordinance native customary law relating to the acquisition or creation of rights in land shall not apply to land the subject of a grant",

it is apparent that customary law was intended to be replaced. However, the absence of the term would seem to imply that in so far as it is concerned, the interest conveyed by a grant under the Act was customary, unless, the expression "sole and exclusive use" is interpreted as synonymous with the freehold estate. With a view to preventing parcellation under section 12 the rules applicable for ascertaining the heir were those of the relevant customary law, although, provision was made for the heir to compensate any person who had a competing claim arising out of customary law. What the Ordinance failed to do was to change the matrilineal system of inheritance under

which the land passes on to people other than the son, a defect emphasised by the Rural Economic Development Working Party. Whatever the problems the Ordinance brought forth however, they were of little consequence in so far as it was never applied except in one area in Eastern Province and when it was finally repealed under the Land (Conversion of Titles) Act of 1975,[144] there was little, if any, outcry.

(e) Agricultural Credit for African Farmers

A brief mention of agricultural policy was made in the introduction to this chapter. It was emphasised there that the primary concern was land conservation, at least in the early stages of colonial administration and a broad-based programme of rural development which encompassed education, conservation and new and improved methods of cultivation. In the early days, agricultural credit was not perceived as a factor which was crucial to African agriculture. The revisions of the Ten-Year Development Plan in 1948, 1949 and 1951 reduced the overall allocation for agriculture and rural development in general. The establishment of the development centres planned became a slow, tortuous process. It was then decided to concentrate squarely on two schemes introduced in selected areas, in the Central, Eastern, and Southern Provinces - the Peasant Farming Scheme, and the African Improved Farmers' Scheme.

(i) The Peasant Farming Scheme

Early experiments in African peasant farming were started in 1948. The objects were to transform African

cultivation from traditional, shifting agriculture to more settled tenant farming; to introduce capital into African agriculture; to settle the population on more fertile land where agriculture was more promising; and to encourage co-operative effort.[145] The loans which covered the cost of clearing, purchase of oxen and ox-drawn implements were interest-free and repayable within ten years.[146] The original source of finance was a revolving fund of £300,000 financed jointly by the British government, through the Colonial Development and Welfare funds, and the Northern Rhodesia government.[147] It was co-ordinated through the Peasant Farming Sub-Committee of the Board of African Agriculture chaired by the Director of Agriculture.[148] Under the Peasant Farming Scheme, a piece of land would be divided into several units, cleared and then occupied by African farmers under agreement with Native Authorities. Since the progress depended on the pace at which suitable areas were stumped and allocated to interested farmers, the scheme did not spread at the same rate in the various provinces. It was most popular in the Eastern Province and Southern Province whereas in the North-Western, Luapula and Northern Provinces, the schemes had marginal success.

By the end of 1963, there were 2,748 African farmers on the scheme, but, by far the largest number of these were in the Eastern Province - 2,337, followed by Southern Province.[149] In other provinces there was very slow progress. In Northern Province the scheme was said not to have been attracting many Africans, and an effort was made to concentrate on demonstration farms to prove the relative merits of new methods.[150] There was some limited response

in 1956 when the number of farms increased from 105 to 158 although the progress being made was admittedly slow.[151] In Western Province (Barotseland) too, the figures were disappointing.[152] Lack of supervision, due to shortage of agricultural staff, was said to be the reason for the apparent failure of the scheme in Western Province.[153]

In 1961, the Ministry of African Agriculture conducted a survey of peasant farmers and their report showed that almost two-thirds of one thousand farm households had incomes less than £60 per annum, and given the fact that the annual repayment required amounted to half of total income received by the farmer, it is not surprising that many farmers had difficulty repaying the loans.[154] Even in the Eastern Province, where the scheme was attended with some success, financial constraints prevented expansion of the scheme. The Ministry of Agriculture urged a more vigorous approach, until at least fifteen per cent of African farmers were on the scheme firmly believing,

> "It is only through the creation of a class of landed gentry farming on a commercial scale and producing the necessary cash crops that a solid foundation can be laid for the Eastern Province agricultural industry. Penny packet production from the crumbs of village subsistence agriculture cannot create any wealth of any kind."[155]

(ii) The African Improved Farmer Scheme

This scheme which was introduced in the 1946/47 season in the Southern Province and extended to Central Province in 1952 was the government's major programme for African agriculture.[156] Farmers who wished to participate were required to register their names at their local agricultural

station and, thereafter, to adopt a recommended system of crop rotation.[157] The farmer was also expected to make contour ridges, maintain conservation works, if any, and adopt reasonable standards of cultivation and weed control.[158] The incentive to join the scheme was in the full price of maize that improved farmers received instead of the reduced price which African producers had been offered since 1936 in areas of maize control, the difference being used for price stabilisation and the financing of conservation works.[159]

The programme was revised in 1949 in such a way that the difference between the full price fixed by the Maize Control Board and that paid to African farmers was, thereafter, paid into the newly-established African Farming Improvement Fund, administered by a committee on which Africans were represented. The Fund was used for the general improvement of farming in the area from which the funds were contributed. Making's summation of the effect of the scheme was that "it provided for an enforced contribution to general improvement throughout the area from all those who brought maize to the market; and it also provided the means by which less efficient producers were required to subsidise more efficient producers".[160] In addition, the fact that the same prices were given for those close to the railway as those distant from it meant that those farmers along the railway were subsidising the farmers who were far from it.[161] Apart from general improvement in the provinces, the fund was also used for bonuses to those who excelled in production figures. This provision of bonuses lasted until 1963 when it was discontinued.[162]

From 1955 loans became available to improved farmers. During this year £4000 for each province was allocated to provide farming capital. The loans were administered provincially by small committees on which native authorities were represented. There was great demand for loans, an indication of the desire of the participants to enter commercial farming. In Southern Province two hundred and eighty-nine loans were granted accounting for £3,817 while in the Central Province one hundred and forty-seven loans were granted totalling £2,085.[163] The loans were used mainly for the purchase of carts, implements, spare parts, fertilizer and seeds. The main security for the loans was the expected bonus.[164] In the Eastern Province where the scheme was not well-developed, the loans were used mainly for stumping and the purchase of hand-operated groundnut shellers.

In 1957 an Ordinance was passed which provided for the establishment of boards to administer African Farming Improvement Funds. The African Farming Improvement Fund Ordinance[165] provided that one of the functions of the Board would be "to grant loans to, and guarantee bank accounts for, on such conditions as it may think, African farmers within the area for which the Board has been established".[166] In order to raise capital for these loans, the Member for the Executive Council was empowered to impose levies on agricultural products in areas where the Fund was established.[167] Such levies were recoverable as civil debt by the Board.

In terms of the impact of the Improved Farmers' Scheme, there was no evidence that the improved farmer programme had

resulted in higher maize yields for participating farmers. In fact, some earlier reports on Central Province showed that the average production per acre was actually higher for unimproved farmers than for improved farmers.[168] In the Southern Province, the improved farmers had better yields but these have been ascribed to better extension facilities, larger farms and greater access to implements. As Baldwin concludes, it was advantageous for farmers to join the scheme on account of the bonuses and loans available but "from a national viewpoint the subsidy may not have resulted in any greater output, especially when the output-depressing effect of the levy on unimproved farmers is taken into account".[169]

Makings points to four weaknesses of both the peasant farming and improved farming schemes, in addition to the "debateable method by which the improved farmer scheme was financed":

i) The tendency for the farmers to overreach themselves by cultivating more land than they could adequately manage;

ii) The limited ability to respond fully to the need for changes in approach and technique under new conditions;

iii) The inability of the extension services to provide enough aid to establish the farmers on a sound basis in their new patterns of farming.

iv) The load of debt with which peasant farmers began.[170]

Baldwin observes:

> "Too much emphasis also was placed upon the necessity for the immediate adoption of European methods of agriculture as the condition for raising income. Attempts to raise agricultural income would have been more successful if there had been greater efforts made to provide better marketing and transport facilities."[171]

In conclusion one must have recourse to the recommendation of the Rural Economic Development Working Party that there must be credit institutions for both long term finance and seasonal credit. The Working Party felt that such credit must be provided on commercial terms, and subsidies must be restricted to interest rates. The Party observed that the approach to the provision of credit to the rural African had been ad hoc; resulting in multiplicity of government sources and some overlap in certain cases while leaving some requirements unprovided for.[172] The administration of numerous small credit schemes constituted a burden on District Officers who were obliged to cope with responsibilities beyond their normal duties. The Working Party recommended a single agency, the Rural Development Bank to be established to cater for government-sponsored credit and have branches in four regions.[173] This last recommendation was not followed, however.

(f) Marketing of African Produce

In the early colonial days, there was no organisation responsible for marketing of African agricultural produce. Marketing was solely by individual initiative. Africans were quick to take advantage of opportunities. Those in the Northern and Luapula Provinces found markets for their cassava and rice in the Congo and Tanganyika respectively.[174] But the reaction to market opportunities was not the same elsewhere. For instance in Solwezi (North-Western Province), where the Kansenshi mine with a labour force of 1000 had been opened, and in Mongu (Western

Province), where owing to increased demand, the price for maize had increased, African farmers failed to respond by increasing their output.[175] Marketing of African produce became easier when private traders, seizing the opportunity, began buying from Africans in rural areas and transporting the produce to urban areas. This boost to African production offset, to some extent, their disability arising from the limitation of land available to Africans under the policy of native reserves. With the development of copper mines and the resultant increase in the market, African as well as European production, rose sharply. In 1930 African producers sold about 30,000 bags to traders, but by 1935 the figure had risen to 100,000. European output increased only from 168,000 to 211,000 bags within the same period.[176]

The rise in the African share of the market did not alarm European farmers so long as domestic production was insufficient to meet the internal demand at the prevailing prices. But overproduction of maize in 1935, coupled by reduction in the market due to recession in the copper industry, and a pessimistic report concerning the future of European farming in Northern Rhodesia,[177] all led to measures calculated to protect European farmers from African competition.[178]

(i) The Maize Control Board

The Maize Control Ordinance of 1935[179] established the Maize Control Board (hereinafter abbreviated to MCB). The long title summarised the functions of the MCB as "the compulsory control of the sale of maize and maize meal". To carry out this function the MCB was empowered to dispose of

any maize or maize meal vested in it, enter into contracts in connection with the handling, milling, storage and the sale or export of maize and maize meal; to purchase maize from Africans; to require any person to furnish information as to his transactions in maize and stocks in his possession or under his control; and the power to issue "participation" certificates.[180]

There were certain categories of maize and maize meal which had to be surrendered to the MCB and over which it acquired property on receipt. These were a) all maize in excess of fifty bags held by any person other than a producer[181] for the purpose of sale as on May 1, 1936; b) all maize and maize meal held by any producer as on May 1, 1936 or maize grown by him thereafter; and c) all maize acquired by any trader after May 1, 1936.

Every person who held maize or maize meal required to be surrendered to the MCB was under a duty to apply to it in writing for instructions as to the delivery of the commodities, and make the delivery at a time and place directed by the MCB. The risk did not pass to the MCB until it had issued a receipt for it. Except for deliveries made by Africans, the MCB was to grant all producers and traders, participation certificates in respect of all maize and maize meal delivered to it.

The market was divided into an internal pool and an export pool. The purpose of the division was to set the domestic price above the international price and transfer the surplus from the internal pool to the export pool.[182] African farmers were allocated one-quarter of the internal pool and European producers three-quarters. The African

quota was determined by computing for the years 1933-1935 the average ratio of African grown grain sold to private traders to the sum of this amount plus European sales.[183]

As the report of the 1938 Commission noted, this procedure did not represent fairly, either, the amounts available for sale by each group, or the amounts actually sold internally.[184] The North-Western Rhodesia Farmers Co-operative Society, which controlled eighty per cent of European produced maize, had facilities for exporting maize, but the traders in African-grown maize did not, as a result, the quantity of African maize actually bought by traders did not represent the surplus of African maize available for sale, as, in the absence of facilities for export, the traders could not buy more than they could hope to sell in the local market.[185]

The Sub-Committee of the Agricultural Advisory Board which decided on the quotas justified the allocation of one-quarter to African farmers on the ground that African efforts to compete with European producers resulted in their using methods of farming which led to deterioration of soil fertility. As the argument went, Africans could destroy the European farming industry, but only at the expense of the soil which would become so impoverished, that in the long run it would fail to yield sufficient quantities of grain.[186]

Despite their small quota, African farmers, assured of a market, doubled their output, an indication of their willingness to respond positively to market opportunities. European farmers, instead, regularly fell short of their quota, a factor which prompted the Director of the Maize

Control Board to remark in 1953:

> "It is quaint to recall the object which it (MCB) was established, for it has never once had to carry it out. It was created to secure to the European growers of maize a proportion of the internal market at a time when over-production was threatened."[187]

The MCB also took some measures to stabilise maize prices. Fearful of operating at a loss the Board set a lower price than it actually realised. While it was possible to distribute the difference to European farmers, the same could not be said of the thousands of African farmers. The surplus was put into a stabilisation fund and from 1949 transferred into the African Farming Improvement Fund.

The importance of the Maize Control Board should not be emphasised, however. It functioned only in certain scheduled areas, which geographically coincided, more or less, with the old railway belt,[188] spanning mostly European agricultural areas. Further, it only dealt with maize until 1954 when it began to handle groundnuts as well.[189]

(ii) The Eastern Province Agricultural Produce Board

The Eastern Province Agricultural Produce Board (EPAPB) was established In 1953 with similar functions and powers as the MCB, to control the marketing of maize and groundnuts in the Eastern Province. At this time the Eastern Province was not covered by the operations of the MCB as the farmers were discouraged from producing maize surpluses which had to be transported to Lusaka, a distance of some 350 miles. The Board was established under the Eastern Province Agricultural Produce Ordinance,[190] but the Board was not operational until June 1953.[191] Its powers and functions

were a replica of the MCB.

The Board also established a price equalisation fund for each agricultural product. Whenever the proceeds from the sales of any produce were greater than the expenditure incurred by the Board, the difference was paid into the equalisation fund, and when the position was reversed, the difference was to be met from the fund. If the money from this fund was insufficient, the balance could be met by an advance from the Accountant-General out of parliamentary appropriations on such terms and conditions of repayment as the Financial Secretary would decide.

(iii) The Agricultural Rural Marketing Board

The Maize Control Board operated an organisation known as the African Rural Buying Organisation for purposes of transporting African maize to their depots.[192] This organi ation operated in the Central and Southern Provinces and was financed by levies for handling and transport, and in the event of a deficit, the deficit was met by the African Farming Improvement Fund for both areas.[193] When the MCB was absorbed by the Federal Grain Marketing Board, the Rural Buying Organisation was operated until 1960 by the new Federal Board on behalf of the African Farming Improvement Funds. In June 1960, the Department of Co-operative and African Marketing of the Ministry of African Agriculture took over the running of the Rural Buying Organisation and renamed it the African Rural Marketing Service and continued to administer it on behalf of the two improvement funds.[193] The area of operation of this Service was, therefore, limited to the areas served by

the two funds, the Central and the Southern Provinces. By 1962, there were suggestions that the operations of the Rural Marketing Service be separated from the two funds and a separate statutory body formed in its place. In July 1964, three months before the date set for political independence, the government established the Agricultural Rural Marketing Board (ARMB), although the Service continued to operate in some rural parts of Zambia until March 1965 when the new Board decided to take over the entire responsibility.[194]

(iv) Co-operative Marketing Unions

On the establishment of the Federation of Rhodesia and Nyasaland in 1953, marketing in both Northern and Southern Rhodesia became the responsibility of the Federal Government. The Federal Legislative List (the list of matters with respect to which the Federal Government had sole power to legislate), included the distribution, disposal, purchase and sale of such commodities as the Governor-General could specify.[195] By the Grain Marketing Act,[196] the Federal Grain Marketing Board was established to take possession of any controlled product and ensure the orderly marketing of controlled products within any prescribed area.[197] The Board was empowered to market both European and African produced grain, but not many Africans were in a position to deliver their grain to the depots of the Board, because, unlike their European counterparts, who had the means of transportation, the African farmers did not.[198] In the main, therefore, Africans, particularly in the Eastern Province, had to rely on Co-operative Marketing

Unions for the marketing of their produce. Although there were a number of marketing co-operatives, only in two provinces were co-operatives significant and these were the Eastern and Southern Provinces.

In the Eastern Province, tobacco, groundnuts and cotton created the impetus in organising marketing co-operatives. From an experiment begun in 1938 by the Department of Agriculture, the Petauke African Tobacco Growers' Co-operative was formed in 1948. Prior to the formation of this co-operative, and the Petauke African Producers Co-operative Society (dealing mainly in groundnuts), the marketing of small surpluses was organised by the Department of Agriculture. But from 1948, these two co-operatives operated rural buying stations, and transported produce from buying stations to depots from which they were dispatched to various consumers.[199]

With increased agricultural development, the number of primary co-operative marketing societies increased by 1952 to as many as thirty in the Petauke area.[200] It was then considered beneficial to the members of these societies if they could be organised into one organisation, and in the same year the Petauke Co-operative Marketing Union was formed.[201] It was to market produce in the Petauke and Katete areas, but in 1956, a separate organisation, the Katete Co-operative Marketing Union, was formed to take care of its own district.

In the Chipata and Lundazi areas, the Alimi Co-operative Union was registered in 1956, but it was not as well organised as the Petauke Co-operative Marketing Union.[202] All these unions were loosely united into the

Eastern Province Co-operative Marketing Association in 1958.[203]

In the Southern Province, prior to the development of marketing co-operatives, African farmers sold their surplus maize in the Namwala area of Southern Province to traders buying on behalf of the Maize Control Board. In 1951, four primary producer co-operative marketing societies joined together to form the Namwala Co-operative Marketing Union, to control and co-ordinate marketing facilitites.[204] By 1955 this union was the largest African-owned and -managed business in Northern Rhodesia, although its interest was principally restricted to maize.[205] In the same province, the Southern Province Co-operative Marketing Union was established in 1960 to serve Choma and Kalomo districts.

Elsewhere marketing co-operatives were established, for instance in the Central and Northern Provinces, but they were not as successful as those in the Eastern and Southern Provinces which are still in business today.

(v) The Search for an Overall Marketing Policy

Discussion of marketing policy has been reserved until the end because statutory marketing boards and co-operative marketing unions had already become operative by the time serious consideration was made regarding overall marketing policy.

1. The Report of the East African Royal Commission

The choice colonial governments had to make was between adopting a laissez faire policy which would lead to the encouragement of private enterprise or establish statutory

marketing boards responsible for marketing and pricing of agricultural produce. While not wanting to see all government price-support policies abandoned, the Commission advocated a far greater reliance on private enterprise. The Commission entertained the view that government-controlled marketing was a policy based on a misconception - that there was a conflict of interest between the trader and the producer, and that it was therefore necessary to protect the latter from the former. In the Commission's own words:

> "In our opinion, this view is founded on a misapprehension of the functions of the ordinary marketing system. In particular, it fails to recognise the mutual dependence of producers and consumers which is effected through the price mechanism of the market and by the activities of specialised traders in developing new consumer wants and new markets for producers."[206]

The Commission also stressed the point that the basic function of a marketing system was not merely the physical movement of goods from the producer to the consumer, but also the provision of a flexible mechanism for the registration of prices whereby production and consumption are equated.[207]

These classical capitalist arguments were, however, rejected by governments of the East African territories affected. It was argued that government-controlled marketing was necessary "to foster the relatively weak and immature economy of the country, which is based on agriculture, and to cushion it to some extent from undue shocks, whether due to changes in overseas markets or to internal causes such as droughts, locusts, diseases, etc."[208]

The findings of the Commission and the response to

their recommendations has been mentioned, although they did not have any direct bearing on policy in Northern Rhodesia because they did not escape the attention of policy makers in the country.

2. The Rural Economic Development Working Party

In its report published in 1961, the Working Party discussed the relative advantages and disadvantages of various approaches to marketing, namely (i) private enterprise; (ii) government direct purchase schemes; (iii) co-operative marketing unions, and (iv) government statutory boards. The Working Party while acknowledging some advantages of private enterprise (same as pointed out by the Royal Commission), observed that there was the danger that buyers would confine their operations to the areas where their profits were highest and transport costs were minimal, thus leaving remoter areas without marketing facilities.[209] All in all, the Working Party recommended some element of control exercised through statutory boards. It was not necessary, the Working Party argued, that statutory boards should provide all the marketing facilities: "where private enterprise, co-operative societies or any other agencies can perform the primary marketing functions efficiently, they can and should be employed under the umbrella of the statutory board".[210] This suggestion would enable private traders and co-operatives to function but only in the capacity of agents of a statutory board. Although a period in excess of twenty-five years has elasped since the idea was proposed by the Working Party, the present government is in the process of implementing a marketing arrangement on

the same pattern.

(g) Summary of Changes over the Colonial Period

The colonial period saw the emergence of a dual system of land tenure; the mitigation of the evils created by the policy of native reserves by the policy of native trust land; a small but increasingly growing nucleus of African farmers under the African Improved Farmer Scheme and the Peasant Farming Scheme; a number of statutory marketing boards; and co-operative marketing unions. Customary land tenure continued to apply in Reserves and Trust Land in matters affecting Africans, while leases in Reserves and occupancy licences in Trust Land were issued to non-Africans who held land for the limited estates prescribed in the relevant Orders. Towards the close of the period a definite effort was made to institute adjudication of title measures to individualise land ownership. Although only one area was declared by the close of the period and the statute under which this measure was meant to be operative was repealed in the post-independence era, a process akin to adjudication has been continued under the Reserves and Trust Land Orders.

In the area of agricultural credit under the schemes the two most important funds established - the Southern Province African Farming Improvement Fund (SPAFIF) and the Eastern Province African Farming Improvement Fund (EPAFIF) are still in operation in their respective provinces although their importance is now minimal on account of the operation of other credit facilities established by the government. With marketing too, the two leading

co-operative marketing unions, the SPMCU for the Southern Province, the EPCMU (now known as Eastern Co-operative Union - ECU), for the Eastern Province have been in operation and have in fact gained in importance on account of the problems which have plagued the main statutory marketing body, the National Agricultural Marketing Board.

3. Alienated Land

The alienated land comprised the Crown Land which was granted to European settlers. English land tenure applied to Alienated Land to the extent to which English law was formerly adopted under the reception statutes discussed in connection with sources of law. Having opted for English land tenure, the choice between freehold and leasehold was to haunt the colonial government until the close of the colonial era. The dilemma was how to encourage European farmers on Crown Land by offering them a system of tenure that offered maximum security but at the same time retain, in government hands, control over land utilization through the prescription of development covenants to ensure land development.

(a) Freehold versus Leasehold

Prior to the establishment of colonial rule, the British South Africa Company favoured freehold estates preceded by a leasehold period which could be converted to

freehold upon fulfilment of development conditions. Stanley, with his South African background, was a forceful advocate of freehold tenure. The Europeans, he argued, should be able:

> "to make in Northern Rhodesia a permanent home for themselves and their children, and to become an integral part of the local population, socially superior to the natives, politically dominant, no doubt, but conscious of a more than temporary association with the country and all its inhabitants and obliged therefore, in the long run by the logic of facts to recognise the economic interdependence of the two races."[211]

He felt that it was inadvisable to follow the example of Tanganyika where leasehold tenure had been introduced; that this was done on the basis that Tanganyika was essentially an "African" country in which European presence was merely temporary. Such a system, he argued, would encourage the European to exploit adversely the land as fast as he could before returning home. He also argued that under a leasehold system, settlers would borrow money on less advantageous terms than if they could offer freehold as security. He believed that permanent settlers would, moreover, take a much more sympathetic view of Africans than "birds of passage":

> "the general attitude of the settlers in Northern Rhodesia towards proposals for the education of the native and his moral and material betterment need not fear comparison with the attitude in other East AFrican territories".[212]

The explanation, as Gann puts it, was to be found in the "psychological factor of security".[213]

These views found favour with Sir Edward Grigg, then Governor of Kenya, but were unpopular with Sir Donald Cameron, Governor of Tanganyika and Sir James Maxwell,

Stanley's successor as Governor of Northern Rhodesia.[214] Maxwell argued that freehold tenure was opposed to the needs of agricultural development, and would enable Europeans to sell their farms in Crown Land to Africans, a practice which would defeat the policy of separating African from European land. Similar points were raised against the freehold system in the Legislative Council. An additional reason given was that freehold would encourage land speculators to buy properties on easy terms for the purpose of getting an unearned increment from improvements that were being made on other adjacent farms. The more popular argument, however, was that alienation of large areas in freehold led to loss of governmental control which was particularly undesirable in a country where European settlement was not yet widespread, and where speculation was becoming rampant. In North-Western Rhodesia, two million acres alienated to big companies were not being utilised, presumably the companies held on to them for speculation purposes.[215] Maxwell's policy, although bitterly opposed, finally won the day in the Legislative Council in 1943. Nevertheless a compromise was reached by which the new policy of leaseholds would not apply to land which had already been alienated in freehold, but would apply to future grants of Crown Land.

(b) Land Control and Development

> "We are unanimously agreed that land should be regarded as a national asset which it is the duty of government to protect, exercising control over its transfer and use and particularly guarding against its misuse."[216]

The above quotation which summarises the raison d'etre of land control was used by the Land Tenure Committee of 1943 to support its case in favour of leaseholds. The Committee further pointed out that three-quarters of a million acres of alienated land was undeveloped, while in some places, there was so much misuse that its destruction was only a matter of time.

It was one thing to urge for some measure of land control and another to determine what form that control must take. In this connection, it must be borne in mind that leaseholds were being granted in respect of agricultural land situated away from the line of rail under conditions meant to encourage land development. The most important of these conditions, so far as land development is concerned, was that the lessee, except with the consent of the Crown was to use the land for agricultural purposes, to carry out bona fide farming operations and have regard to principles of good husbandry; to complete the minimum improvements set out in a schedule within the specified period; not to make any dealings in the land without the consent of the Crown; and not to abandon the land or permit it to remain unproductive for a period in excess of three years without the consent of the Crown.[217]

In spite of these conditions, however, many farms remained undeveloped. The problem lay in the inefficient system of monitoring compliance with development conditions. As the Select Committee on the Constitution and Terms of Reference of the Land Board reported, the inspection of farms was inadequate.[218] Failure to carry out regular farm inspections was attributed to manpower constraints. The

Committee pointed out that since farm inspections were undertaken by one land settlement officer who was also required to see that all loans granted by the Land Board were being spent on the projects for which they had been made, there was a need to increase the establishment of the Land Board by increasing the number of settlement officers to three.[219]

The prescription of development conditions in leases was not the only method of ensuring the development of agricultural land. The process of selection of tenants, the control of dealings in land, and the charging of rent for undeveloped land were also used. One might also add the law regarding compensation for improvements made to the land by the tenant could have had the effect of encouraging the tenant. The impact of these measures was, however, limited because their application was restricted to leasehold farms which in 1954 constituted less than half of all available agricultural land for alienation to European farmers.

(i) Selection of Tenants

The process of selection was an important initial step to achieve two things - first that the applicant for land was genuinely interested in farming and, second, that he was in a position to raise the initial capital necessary to start farming operations. In 1946 the Land Board was created as a separate administrative section of the Lands Department.[220] Its duty was mainly to promote new settlement, but the Land Board played a very important role in shaping much of the criteria taken into account in the allocation of land and control of transfers of land.[221] The

initial policies are clearly stated in the Land Board's annual report of 1950.[222] With respect to applicants who were resident abroad, the Board required that such applicants should clearly indicate that they intended to come and farm in person, and that they were prepared to liquidate sufficient of their assets to secure adequate development of their land. The Board also decided that they were not prepared to hold land for applicants outside the country unless they were convinced that the applicants intended to come and take up farming personally, and the maximum period the Board would hold such land was fixed at one month.[223] Later in the year, it became a matter of principle that, as far as possible, all applicants resident abroad should be interviewed.[224] With respect to residents, the most important requirement was that they should satisfy the Board that they were genuinely interested in farming. The Board did not insist that they should personally carry out farming operations, in fact, "no objection would be raised to the land being farmed through a satisfactory manager in the preliminary development stage".[225] In addition to the above, the Land Board required to be satisfied, before granting a lease, that the applicant has sufficient capital, knowledge, and experience to be capable of using the land beneficially. There was also a capital requirement of three thousand pounds, but suitable applicants in possession of at least one and a half thousand pounds were accepted, and a loan equal to the minimum capital was advanced to new settlers.[226] After May 1946, the Land Board was obliged to reject many applications which were not supported by the necessary qualifications or

farming experience.[227] The following year the Board evolved a rule to prevent land accumulation. Where an established farmer who was in a position to purchase freehold land in the open market, or who had not fully developed his holdings applied for land which the Board considered suitable for new settlement, he was informed that he would have to wait until the demand from those who had none abated.[228] Most of these rules were concretised in the Agricultural Lands Ordinances of 1956[229] and 1960[230], discussed below.

(ii) Proposals for Taxation of Undeveloped Land

Prior to the Agricultural Lands Ordinances, the possibility of introducing a tax on undeveloped land was raised by the Governor himself. On his tour of Southern Province in 1959, the Governor, Sir Arthur Benson, discovered that fifty-seven farms were unoccupied and hence "idle". In his minute addressed to the Secretary for Lands, the Governor had additional reasons to account for the urgent need for land control.[231] The Governor feared that the farms would, in time, be occupied by squatters if they were not put into production. He also argued that, apart from making conservation measures more difficult, the sight of so many large and vacant lands to the Africans who were suffering from overcrowding, might trigger them into creating serious political difficulties. In the light of the foregoing, the Governor said:

> "It seems to me that we ought to go very carefully into the question whether we ought not to introduce a fairly heavy 'unoccupied land tax'".[232]

This suggestion was not a novel one in British colonies at

the time. Some form or other of taxation existed in British Columbia, South Africa, Australia, and Southern Rhodesia, with varying degrees of success.[233] Although it was generally believed that a tax on undeveloped land was unnecessary whenever there were covenants in the grant to the effect that the land should be beneficially used,[234] this measure could, additionally, be used as a source of revenue[235], after all, as the Governor pointed out, absentee owners were receiving benefits arising from conservation measures being undertaken by the government and adjacent farmers, apart from benefitting from the rise in land values resulting from improvements being made by other farmers.[236]

There was considerable opposition within the Lands Department to introduction of a land tax. Perhaps the time was inopportune as such taxation had by then been abandoned in Southern Rhodesia on the grounds inter alia, that it was impracticable to enforce. The issue resolved itself to one of the extent to which government's interference in private affairs could be justified by the public interest. It was argued by the secretary to the Agricultural Lands Board that there was no shortage of agricultural land in the territory, but a shortage of people with adequate capital to develop it. This assertion was not supported by any evidence, but it is clear that from 1954 the demand for farms, particularly undeveloped farms, had fallen. Hence there were few alienations of Crown Land farms and lessees who wished to assign their farms are said to have had "considerable difficulty in finding purchasers sufficiently well qualified as regards capital and farming experience" to take over the land.[237] Such a fall in demand for land lent

support to the secretary's argument that taxation, by itself, could not bring the land into production. As the argument went, taxation could have a marginal effect in some cases but there was a probability that a heavy land tax would merely result in the accumulation of a large debt owed by the landholder to the government, the liquidation of which would vest the land in the government but the government would also have the same problem of how to develop it.[238]

Since there was little the government could do to bring unoccupied land into production, the government's only role was to prevent damage to natural resources on unoccupied land and to prevent nuisance from unoccupied land to adjacent occupied land, and it was argued that the Natural Resources Ordinance,[239] the Noxious Weeds Ordinance,[240] and the Control of Bush Fires Ordinance[241] provided adequate statutory control. The idea of an unoccupied land tax, thus proved unpopular, was to surface under the guise of a rent for undeveloped land. The Agricultural Lands Ordinances empowered the Minister to make regulations[242]/rules[243] to provide for the annual rent. The Minister used this power to peg the annual rent to the value of undeveloped land.

(iii) <u>The Agricultural Lands Ordinance</u>

The Agricultural Lands Ordinances sought to achieve two objectives. The first and foremost was to afford tenants an opportunity to convert their leaseholds into freeholds.[244] The second was, as far as possible, to ensure that agricultural land was adequately developed by making the grant of a freehold interest dependent on fulfilment of

specified minimum development goals. The Ordinances were roundly welcomed by farmers who had, relentlessly been striving for freehold. The 1956 Ordinance[245] was soon found to be inadequate because it did not vest sufficient decision-making power in the Agricultural Lands Board it created. The government decided that powers of decision-making in matters affecting individual applicants for land could be better placed directly under the Board, so constituted as to have a majority of non-governmental officials who would provide knowledge and experience, both of the practical side of farming, and of the numerous technical and administrative problems concerned.[246] The necessary changes were effected by passing another Agricultural Lands Ordinance in 1960 and repealing the previous one.[247]

1. Establishment of the Agricultural Lands Board

Section four of the Ordinance established the Agricultural Lands Board whose membership was, a Chairman, who was to be a non-governmental officer appointed by the Governor; three government officials, also appointed by the Governor; two persons selected by the Governor from a panel of not more than four names nominated by the Northern Council of the Rhodesia National Farmers' Union[248]; and such additional members, not exceeding two, appointed by the Governor in his discretion, provided that the Board was not to be so constituted as to have a majority of government or public officers. Members of the Legislative Council were barred from appointment to the Board. Although there was no indication of which government officers were eligible, it

became established that the Commissioner of Lands, the Director of Surveys and the Director of Agriculture were members.

Under section 8(1) the functions of the Board were stated to be as follows:

a) to keep under review the use that is being made by the Crown of Crown Land outside urban and peri-urban areas and to make such recommendations to the Minister thereon as it may deem fit;

b) to carry out such other duties in relation to the alienation of Crown Land outside urban and peri-urban areas as the governor may, on the recommendation of the Minister, place upon the Board; and,

c) to keep under review the general operation of this Ordinance and to make such recommendations to the Minister thereon, as it may deem fit.

2. Alienation of Land

Land control under the Agricultural Lands Ordinance was effected through the rules governing selection of those to whom land was to be alienated. Under section ten, the Governor was empowered to declare any area, by notice in the gazette, as falling under the Ordinance. Following such declaration, the Board was required to prepare allotment plans showing boundaries of each economic unit which would then be available for allocation to individual applicants. Landholders of leasehold property could also apply to have their leaseholds covered by the Ordinance. When allotment plans were approved by the Minister, the Board inserted a notice in the Gazette and in at least one newspaper published in the country. The notice called upon the members of the public to make applications in respect of vacant land for the parcels of land included in the

allotment plan.

The Ordinance provided the Board with specific considerations to be taken into account in determining applications for land. Some of these criteria had been shaped earlier by the Land Board, and because of their significance in ensuring that only the required calibre of applicants were picked, they are quoted in full. Section 17(2) reads: "In consideration of applications for holdings the Board shall have regard to -

a) any direction of general policy given to it by the Minister;

b) the age of the applicant;

c) the character of the applicant;

d) whether the applicant is willing to make a declaration affirming his intention personally to occupy the holding and to work and develop it exclusively for the benefit of himself and the members of his family, if any;

e) whether the applicant possesses the capital necessary to ensure the beneficial occupation of the holding;

f) whether the applicant possesses the qualifications necessary for beneficial occupation of the holding; and,

g) any other facts which, in the opinion of the Board, are relevant to the individual application or to the holding."

From the records available at the Lands Department, there does not seem to have been any directions from the Minister regarding general policy, otherwise the rest of the criteria had already been in use by the Lands Board prior to the Ordinance. One ironical departure from the Land Board's practice which had been firmly established was the omission of a provision by which, in lieu of personal occupation and in some cases extensive farming experience, the landholder

was permitted by the Board to engage a farm manager whom they approved of.[249] The Agricultural Lands Ordinance was in force for too short a time to provide a fair assessment of whether it was well suited to promote agricultural development. In the past twenty years, the criteria for selection of applicants have undergone the test of time and changing circumstances to provide a fair assessment of their importance. In the post-independence period, problems of interpretation have arisen regarding, particularly, how much capital, or qualification should be demanded. The question of residence or non-residence in the territory has become one of citizenship, and the emergence of farming corporations has complicated the application of these criteria. Discussion of how the post-independence Agricultural Lands Board has applied these criteria is contained in Chapter Two, but it may be pointed out at this stage that the extent to which they are strictly applied must depend on the overall farming scene in the country, particularly, the demand for farm land and the availability of institutional credit.

3. Occupation of Holdings

One of the most important goals the Ordinance sought to achieve was the promotion of agricultural development, at least, during the leasehold term of thirty years.[250] Section 21(5) provided that the lessee should use his holding primarily for agricultural and ancillary purposes, and for the personal residence of himself, his family and necessary staff, and "for no other purpose save with the prior consent of the Crown". This provision was nothing

new, the leases granted prior to the Ordinance had always insisted that the farmland must be used for agricultural purposes only.[251] Section 21(1) reads:

> "Every lessee shall take up effective personal residence on his holding within six months after the date of commencement of his lease or within such longer period as may be approved by the Board, and shall beneficially occupy his holding.
>
> (2) Beneficial occupation in respect of any holding shall mean -
>
> (a) from the date of taking up effective personal residence as required by subsection (1) of this section -
>
> (i) in the case of an individual lessee personal residence on the holding, and in the case of a company, personal residence on the holding by a manager who is in charge of farming operations and who is approved for that purpose by the Board;
>
> (ii) the practice of sound methods of good husbandry;
>
> (iii) the proper care and maintenance of all improvements effected on the holding;
>
> (b) before the expiration of a period of three years after the date of the lessee taking up effective personal residence as required by subsection (1) of this section.
>
> (i) the annual cultivation of such proportion of the area of the holding as may be laid down by the Board;
>
> (ii) the maintenance of stock as laid down by the Board;
>
> (iii) the provision for the numbers of stock maintained under the provisions of sub-paragraph (ii) of this paragraph of dipping or stock spraying facilities, paddock fencing or ring fencing and water supplies in each case considered adequate by the Board;
>
> (iv) the provision of a habitable house and such farm buildings as may be reasonably necessary for the purposes of the proper working of the holding;
>
> (v) the provision of permanent improvements,[252] whether required by or under the preceding provisions of

> this section or not, valued by the Board at not less than such sum as may have been laid down by the Board."

The provisions relating to beneficial occupation have been reproduced in full because they are the most important in relation to farm development and they have not been amended after independence.

It was a difficult task for the Agricultural Lands Board to see to it that these provisions were complied with despite the fact that the number of farms declared to fall under the Ordinance were fewer than those which did not. The Lands Department enforced compliance through its branches in the Eastern, Central and Southern Provinces in all of which a limited number of personnel undertook farm inspections for the purpose. But in the remaining five provinces, which had neither the branches nor resident farm inspectors, little was done to investigate the state of development of the farms, until the landholder himself made an application to exercise his option to purchase, a pre-requisite to the grant of freehold title.[253]

4. Restraint on Alienation

A lessee was enjoined from assigning, sub-letting, mortgaging, charging or creating any interest in land or attempting to do any of the above or entering into any partnership without the prior written consent of the Crown.[254] An application for consent had to be in writing and submitted to the Board for its approval. A contravention of the provisions regarding consent being obtained prior to the transfer of interests in land was to

be regarded as a failure to comply with a requirement of the Ordinance, and such a failure, like a failure to fulfil any of the terms or conditions of the lease, empowered the Board to serve a notice setting a period within which the lessee must remedy the breach.[255] On the failure to comply with the notice, the Crown was empowered to re-enter and thus determine the lease.[256] Where consent was sought, the Board, in exercising its power to approve or withhold consent, applied the same criteria in section 17 in determining the suitability for farming of the proposed assignee or sub lessee.

5. Compensation

The terms on which compensation may be paid to a tenant in respect of improvements may encourage or discourage the tenant from improving or developing his land. In this respect the Agricultural Lands Ordinance, while requiring the lessee to develop his land to the prescribed standard, was less reassuring as to compensation. Section 22(1) stated that on the determination of the lease by effluxion of time no compensation was payable in respect of buildings or improvements effected on his holding. It is only under a proviso to this subsection that the Minister could, on the recommendation of the Board, make an ex gratia payment to a lessee for the improvements on the land and only if the lessee had not failed "substantially to comply with the provisions" of the Ordinance. The amount of compensation was to reflect the difference between the sum received from the disposal of the holding and the administrative cost. At the same time, there was no duty requiring the Crown to

dispose of the holding. Under subsection 2 in determining whether or not to recommend to the Minister to make an ex gratia payment, the Board was required to have regard to -

> "a) the value of the buildings or improvements concerned and the date of the termination of the lease;
>
> b) the economic state of the agricultural industry in the area in which the holding is situate at that date;
>
> c) the value of any payments made from public funds towards the cost of permanent improvements on the holding."

It is clear from the debate preceding the Agricultural Lands Ordinance, 1956 that the making of payment of compensation discretionary on the part of the Minister was to save the government from being subjected to too many claims, but there was concern that injustice should not be caused by adopting the ex gratia system. As Mr. L. Tucker put it:

> "In other words, we want to be quite certain that somebody does not lose his rights for some minor breaches of the regulations and end up by losing everything that he has put into the land in the way of improvements without some form of recompense."[257]

A similar anxiety was also expressed by Mr. J. Gaunt. It was in response to such protestations that the government made ex gratia payment available to every lessee who had "not failed, substantially, to comply with the provisions" of the Ordinance.

Instead of accepting compensation, the lessee could opt for the right to remove all the improvements to the land made at his own expense, and the Board was empowered to recommend to the Minister that the lessee should have and exercise this right so long as such exercise did not

materially damage the land.[258] In spite of these provisions, it would appear that compensation was not meant to be a factor which should induce farmers to develop their farms. It appears the government was more interested in the person who exercised the right to purchase and obtained a Crown grant,[259] thus removing himself from the application of development requirements. Once a Crown grant was made, there was little the government could do to ensure that the fee simple owner maintained the developments he had effected during the leasehold period. There was, however, the possibility that the government could compulsorily acquire the land if it was abandoned.

6. Abandonment and Compulsory Acquisition

To forestall deterioration of the land arising from abandonment, the Ordinance provided for a machinery by which the government could recover the land. The procedure for compulsory acquisition under the Ordinance was elaborate and deleterious, so much so that there is no record of the provisions having been used. First the Ordinance provided a definition of abandonment. Land was deemed to be abandoned if the owner either failed for a period exceeding three years, to maintain occupation of the land in person or through a tenant or manager, or failed to maintain on the land, to the satisfaction of the Board, a reasonable standard of agricultural production having regard to the character, extent and situation of the land and the general level of agricultural production being maintained on agricultural holdings of similar character in the neighbourhood.[260]

In the event of abandonment, the Board could give notice of the fact to the landowner and order him to reoccupy within, at least, twelve months.[261] The notice was to clearly indicate the steps that must be taken by the land owner to comply with it. There was provision enabling the landowner to appeal to the Minister against the notice, whereupon the Minister was required to appoint three persons (one of whom should have legal qualifications) as referees.[262] The land owner had a right to be heard by the referees who were to report to the Minister informing him of their findings.[263] The Minister could, after receiving the report of the referees, decide whether the notice should stand or be withdrawn. Where the notice had been given to a landholder, it was incumbent on the Board to make an offer of compensation within six months from the date of expiry of the notice. If no offer had been made, the intention to acquire was deemed to have been abandoned. Disagreements as to the amount of compensation were to be settled by the High Court in the same manner as other disputes under the Public Lands Acquisition Ordinance, cap 87. It was also provided that in determining the valuation of the land the High Court was to have regard "only to its value as agricultural land including the value of permanent improvements effected thereon for farming purposes".[264] These provisions were rather cumbersome and time-consuming. There was no provision prescribing the minimum period within which the Minister was to appoint referees, or indeed the period within which referees were to report. The process could continue for so long as to enable the landowner to dispose of it (which he could do since there was no prohibition) to

any person of his choice, on terms quite different from those the High Court was to take into account when determining the value.

The number of farms declared to fall under the Ordinance (indicated in the Schedule to the Agricultural Lands Act[265]) taken together constitute a small part of alienated agricultural land. Nevertheless, given the brevity, the Ordinance was in force prior to independence, its application was relatively extensive. A recurring question relates to the criteria used by the government in determining which farms should be declared and which should not. The Ordinance is silent on this, but it has been suggested that the areas declared were those in respect of which the government had provided some services such as conservation work and access routes to markets.[266]

An assessment of the impact of land control measures during the colonial period is practically difficult to make. Except for the denial of the right to compensation, the measures put in hand to ensure land development, coupled with adequate inspection of farms, would have improved the state of the farms falling under the Ordinance. The impact would however have been slight because of (1) the restriction of the application of the Ordinance to lands under leasehold; (2) the weaknesses in the provisions relating to abandonment; and (3) manpower constraints to enforce compliance with development conditions.

(c) Provision of Credit

(i) Pre-1946

Agricultural credit was indispensable to the early settlers who lacked both capital and, in some cases, farming experience. The absence of initial loans for the purchase and the clearance of land could have discouraged settlement. As early as 1934, an Agricultural Loans Board was established with a capital of £24,000. This institution had a short life, its losses were written off in 1949 and the one loan remaining on its books was handed over to the Land Board in the same year.[267] Some loans were given by commercial banks, but their insistence on first mortgages reduced their popularity. Other bodies which helped were the African Labour Corps and the Department of Water Development and Irrigation,[268] but there was a need for a body clearly responsible for the grant of agricultural credit.

(ii) The Land Board and Credit

In 1946 the Land Board was created for two purposes - to administer agricultural land and to provide credit to farmers. The Land Board offered three kinds of loans. For new settlers the Board could advance a loan equal to the value of the amount the settler himself was prepared to invest into the farm, with the maximum fixed at £1,500. No short-term loans were granted by the Board in the early stages, but an established farmer could secure a medium term loan repayable within three years, on the security of a first mortgage on his farm. Long term or development loans, but for restricted purposes only, were granted. These purposes were ordinarily in the nature of long term

investments such as irrigation, farm buildings and improvements, essential machinery, the purchase of land and the promotion of agricultural industries.[269]

The Select Committee appointed on the 10th January 1950 to review the constitution and terms of reference of the Land Board, particularly, with regard to loan facilities made recommendations which strengthened the position of the Land Board.[270] The Committee recommended that responsibility for all loans must rest with the Land Board and that no government department should involve itself in loan grants. The argument was that the multiplicity of loan agencies resulted in excessive indebtedness which was difficult to prevent in the absence of knowledge of the total sum of loans owed by an applicant. The Committee recommended that total indebtedness per farmer, so far as the Land Board was concerned, should not exceed £3,750 for all forms of credit.

On new settlement loans, the Committee recommended that the maximum figure should be increased to £2,000, so long as the farmer also invested an equal sum of money into his farm. This increase was not to be applied country-wide, however. In the tobacco growing areas of Eastern Province, initial loans had always been restricted to £1000 and the Committee felt that bearing in mind that tobacco growing was cheaper and the financial return faster than mixed farming, the figure should not be altered. On medium term loans the Committee deprecated the insistence on first mortgages, particularly where only small amounts were needed. It recommended that a medium term loan of £750 should be granted to a farmer mainly for the purchase of farm

implements, not necessarily on the security of a first mortgage, but alternatively, on the security of a bill of sale, or stop orders on successive crops, or promissory notes. The loans were to be repayable in three years subject to extension of period at the discretion of the Board for a further two years. The Committee also recommended the increase of the long term loans from £2,000 to £2,500.

The most important new forms of loans recommended by the Committee were short-term loans and loans for the purchase of freehold land. The Committee recommended that short-term loans, which were then being given by the African Labour Corps and the Department of Water Development whose loan functions were to cease, should be granted, either by government or the commercial banks, to co-operative societies for their members. But in respect of non-members of the farming co-operative societies, the Land Board should grant short-term loans of up to £500 to pay for labour and inputs on the security of a stop order against the sale of the farmer's planted crop. With regard to its recommendation for loans for the purchase of freehold land, the Committee felt that this was only to be a temporary measure, pending the establishment of a Land Bank. The Committee felt that such loans were necessary in order to afford financial assistance to intending settlers to develop freehold areas along the line of rail, some of which were lying idle.

By the end of 1952 the Land Board was owed over £342,000. This included the 1952 repayment instalments carried over from 1951 and a sum representing the

outstanding interest at the end of the year. The 1951-52 season was a particularly bad one owing to excessive rains. Government made special flood loans to farmers who, through no fault of their own, had incurred losses. A special committee comprising members of the Loans Committee of the Land Board and the representatives of farmers' associations considered applications for flood loans and approved 132 applicants for loans, totalling £169,610.[272]

One important piece of legislation bearing on agricultural credit during this time was the Farmers' Stop Order Ordinance of 1950. The Select Committee disclosed in its report that there was some demand, particularly, one would assume, from lenders, that there must be a system for the registration and publication of stop orders. Prior to the Ordinance, therefore, stop orders were constantly used without adequate protection for lenders in terms of priority and even the knowledge that the farmer had executed a stop order in favour of other financial institutions. The Committee felt that there was no need to publish stop orders in the government gazette, but did recommend that there be legislation making it compulsory to have stop orders registered with the Land Board, and such information obtainable by anyone interested on payment of a search fee. The Farmers' Stop Order Ordinance of 1950[273] protected lenders by providing for the registration of Stop Orders, rendering stop orders null and void if not registered, and by making them rank in terms of priority according to the date of registration.

(iii) <u>The Land and Agricultural Bank</u>

The Land and Agricultural Bank took over from the Land Board which had had to cope both with the provision of loans through its Loans Committee, and the supervision of agricultural land through the Alienation Committee. The Land Bank, which was established under the Land and Agricultural Bank Ordinance[274] followed the reports of two Select Committees of the Legislative Council. The first committee headed by Mr. H. McDowell reported on the 1st June, 1951.[275] The reports included draft legislation concerning the constitution and operation of the Bank. In June, 1952 the Legislative Council considered a Bill containing the recommendations of this committee but decided to appoint a further select committee to re-examine the matter. The report of the second committee was considered and adopted during the fourth session of the 9th Legislative Council and the Land Bank Ordinance became law on the 25th of October 1952.[276] On the commencement of business on the 1st of August 1953, the Bank took over the loans and interest of the Land Board.[277] It also took over the securities held for these loans and discovered that in a number of cases such securities, although acceptable to the Land Board under its terms of reference, were unsatisfactory from the Bank's standpoint.[278]

Section 3 established the Land Bank as a body corporate with perpetual succession and a common seal. The operation of the Bank was put under a Board consisting of not less than five nor more than seven members (later increased to twelve), all of whom were appointed by the Governor-in-Council.[279] Apart from monies given to it by government, the Bank was empowered to raise funds through

discounting with other banks; bills of exchange of co-operative agricultural societies; overdrafts from other banks; receiving money on deposit; and any other method which the Secretary for Finance might approve.[280]

The business of the Bank was to lend money to farmers to be used for the purchase, development and improvement of land; and to lend to agricultural co-operatives, and farmers' associations or unions for any purpose which, in the opinion of the Bank, was likely to further the interests of the farming industry.[281]

The emphasis in the definition of a "farmer" was on the carrying on of farming for a profit motive. Taken by itself, this did not exclude Africans as such, since African commercial farmers could qualify, but in 1952 few, if any Africans, were able to qualify as commercial farmers.

The scope of the security required by the Land and Agricultural Bank was so broad as to enable most European farmers to manage. They included:

a) mortgage on land;

b) charge on land secured as provided in section 31 of the Ordinance;[282]

c) stop orders on crops or other produce;

d) bills of sale;

e) any other security approved by the Board.[283]

Loans to co-operative agricultural societies could be made on the security of subscribed, but unpaid, capital and the amount of any debts owing to the society.[284]

The Ordinance, however, prescribed certain limits on securities and loans. Loans made on the exclusive security of land were not to exceed sixty per cent "of the fair

agricultural or pastoral value of the land, as determined by the Bank".[285] Another limitation was that no loan exceeding five thousand pounds could be made to any single farmer except with the consent of the Financial Secretary. As to the period within which the loans were to be repaid, the Ordinance gave the Bank a wide discretion by only prescribing the maximum period of thirty years, except that for loans made on the security of informal charges evidenced by a registered memorandum in accordance with section 31, the maximum period was fixed at five years.[285]

The Land and Agricultural Bank was a very successful credit institution because of its insistence on adequate security. A large part of its capital was spent on seasonal loans but it also spent a sizeable proportion of its funds on long term loans, with loans for the purchase of land the redemption of mortgages, and the construction of buildings and dipping tanks respectively, being the most prominent.[287] Its prospects, however, varied in accordance with whether the particular season was or was not favourable, a factor which, to this day, makes agriculture such a perilous investment in Zambia. The poor rains during the 1958-1959 season[288] and the late arrival of rain in 1957-1958 season[289] meant that many farmers were unable to keep up their payments. Notwithstanding these problems, however, the Bank had, by 1963 exercised its power of sale as mortgagee only in one hundred and nine cases.

As the Bank relied heavily on the security of land, it was vulnerable to changes in land values and indeed the question of marketability of land was to haunt the Bank towards the close of the colonial era. From 1959, when the

constitutional future of the country began to cause anxiety to many European farmers the Bank had difficulty finding buyers of the farms mortgaged to it.[290] The land values were also adversely affected. Nevertheless, this slump in demand did not cause the Bank to reduce interest rates on its loans. The Bank had steadily increased its interest rates from 5½% in June 1958[291] to 7% in 1962 on long term loans and 8% on seasonal loans.[292]

(iv) The Agricultural Credits Ordinance, No. 28 of 1961

This Ordinance was passed to facilitate the borrowing of money on the security of charges on farming stock and other agricultural assets, and for the registration of such charges. The Ordinance, therefore, enabled farmers to borrow not only from the Land and Agricultural Bank but also from other commercial banks by creating a charge on farming stock. Farming stock was broadly defined to include "crops or horticultural produce whether future growing or severed from the land".[293]

A fixed charge conferred on the lender, the right to take possession of the property and, after five days, sell the property either by auction or private treaty, and apply the proceeds of sale towards the discharge of the debt secured by the charge and pay the surplus, after reimbursing himself on the cost, to the borrower.[294] The creation of a fixed charge did not deprive the farmer of his right to dispose of the subject matter of the charge.[295] But he was accountable to the lender for the proceeds which, on receipt he was to apply towards discharging the borrower's liabilities. At this point the protection of the lender

ended. Section 4(5) stated that if the proceeds of sale supposed to be paid to the lender were paid to some other person, "nothing in this Ordinance shall confer on the holder a right to recover such proceeds from that other person unless the holder proves that such other person knew that such proceeds were paid to him in breach of such obligation, but such other person shall not be deemed to have such knowledge by reason only that he has notice of the charge."

In other words, the lender had to show not only that the person to whom the borrower paid the money realised from the sale of property the subject of the charge, knew that there was a charge on the property owned by the borrower, but also that the money tendered was realised from the sale of the property under the charge. This provision, meant to protect third parties dealing with people whose property is under a charge, put lenders in a rather vulnerable position vis a vis third parties. For this reason, it is not surprising that mortgages remained more popular with banks than agricultural charges.

(d) The Marketing of European Grain

Like African producers, European farmers were greatly encouraged by the expansion of the copper industry which led to increased demand.[296] Marketing of European grain did not pose a problem because the majority of European farmers lived near the urban markets and major transport routes such as the line of rail. In the face of a depressed market, European farmers had the advantage of political power

exercised through their representatives in the Legislative Council to pass laws which would thwart African competition. The Maize Control Ordinance which established the Maize Control Board and allocated seventy-five per cent of the internal market to European farmers was one of the measures calculated to discourage African production.

In 1957 the Maize Control Board and the Eastern Province Agricultural Produce Board were merged with the Grain Marketing Board of Southern Rhodesia to form the Federal Grain Marketing Board under the Federal Grain Marketing Act.[297] The Grain Marketing Board had few depots in rural areas, with the result that it mainly served European farmers. Even prior to the creation of these Boards, European farmers had powerful marketing and producer co-operatives which had access to foreign markets. The Northern Rhodesia Tobacco Co-operative specialised in encouraging the production and marketing of tobacco throughout the country, while the Abercorn Co-operative Society marketed coffee. In the case of maize, the North-Western Rhodesia Farmers' Co-operative Society, controlling a membership of eighty per cent of European maize growers, was responsible for the marketing of maize within and outside the territory.

(e) Summary of Changes Over the Colonial Period

The colonial period was characterised by the "settler dream". The conviction that the development of the country depended on attracting European settlers led to the adoption of policies relating to land, credit and marketing, geared

towards encouraging white settlers into the territory. The land declared to be Crown Land was the most fertile and accessible in terms of the existing transport infrastructure. But when it came to the choice of which system of tenure should be offered in respect of agricultural Crown Land there were marked shifts from freehold in the early days of European settlement to leaseholds in the late forties and then to freeholds as conceived in the late fifties, under the Agricultural Lands Ordinance. The shift from leaseholds to freeholds can only be understood in the context of growing political strength of European settlers in the Legislative Council.

Unable to prevent settler power in the Legislative Council, the colonial government was left only with the option of imposing development conditions as the pre-requisite for conversion of leaseholds to freeholds. Nothing, however, prevented the landowner, once he had the freehold grant, from holding on to the land purely for speculation purposes. Many farmers availed themselves of the opportunity and converted their leaseholds into freeholds.

With regard to credit and marketing, the colonial period witnessed the emergence of specialised statutory bodies to provide credit, and market agricultural produce. The Land and Agricultural Bank filled the gap left by commercial banks by widening the scope of acceptable security to include stop orders and agricultural charges. In marketing, the efforts of marketing co-operatives were supplemented by the powerful Federal Grain Marketing Board.

C. CONCLUSIONS AND SUMMARY OF CHAPTERS

The development of the copper mining industry at the beginning of the nineteenth century provided a market for agricultural production. The British South Africa Company decided to introduce European settlers to provide for this growing market. In the late 1920s, native reserves were set up, and the land adjacent to the line of rail was retained exclusively for European use. Due to the World Depression in the late 1930s and the decline in the size of the domestic market, a government statutory marketing board, the Maize Control Board, was established for maize to ensure that African production did not take up an increasing share of the limited market. The quota system which was instituted had a depressing effect on the growth of African marketed produce, which was mitigated only by a rise in world prices and a growth in the internal market in the 1940s.

Only after the Second World War was any notable attention given to agricultural development. Government policy toward African agriculture took the form of improved farming schemes and soil conservation, but was restricted to the line of rail and the Eastern Province.

The Maize Control Board had a monopoly on maize purchases and sales in the line of rail area and the Eastern

Province. The price paid to African producers was less than that paid to European producers because of the obligatory contributions required of African farmers to various African Farming Improvement Funds. The government monopoly on marketing may have seriously impeded the development of private marketing, but it was necessary to encourage production.

The Federation of Rhodesia and Nyasaland did little to help African agriculture since it divided the responsibilities for European and African agriculture. European agriculture was a federal matter, while Afrian agriculture remained a territorial responsibility. This encouraged their separate and unequal treatment. Because marketing was a federal matter and the federal government was not responsible for African agriculture, it is not surprising that marketing of African produce did not receive much government support.

At independence the government was faced with two widely divergent agricultural systems - the European and African - and within the African system, two different levels of development: that of farmers along the line of rail and in the Eastern Province, and the farmers in the rest of the country. To compound the situation many European farmers left the country in the wake of political independence and shortly after.

The primary object of the thesis is to appraise the legal framework within which agricultural development is to be attained in Zambia. In this connection, three aspects are of primary importance - landholding, agricultural credit facilities, and the marketing of agricultural produce. In

all these aspects, government has, since independence, introduced reforms to reflect its own agricultural policy by the use of law as a tool for achieving agricultural development.

The advent of independence has brought drastic changes in agricultural policy from that of reliance on commercial farmers to produce food in sufficient quantities to meet the demand at home and a surplus for export, pursued by the colonial government, to one of encouraging peasant farmers not only to be self-reliant in food production, but also to contribute towards exportable surpluses. This change in policy is not, however, calculated to discourage the commercial farmer, whose role has been and still remains very important. In fact, the reforms regarding landholding have been focussed, in part, on the portion of agricultural land largely used by commercial farmers.

On landholding, the reforms introduced broaden the scope of government control of all land in general, although the thesis concentrates on agricultural land. The thesis examines the nature of the reforms and their relevance to the development of agriculture on State Land (formerly known as Crown Land). The thesis also examines the means by which government exercises control over agricultural land and the effectiveness of those means. The conclusion drawn is that while the case for government control of agricultural land has been made out, the means by which such control was to be exercised were not properly conceived. Thus, it is argued, it is impossible to gauge the impact of these reforms on the development of agricultural land. The thesis also examines landholding in the Reserves and Trust Land - generally

referred to as customary land. There are two systems of landholding in the Reserves and Trust Land - customary and statutory landholding. Originally, statutory tenure was introduced under the Reserves and the Trust Land Orders-in-Council to cater for, among others, European farmers who wished to settle in these areas, but since independence, statutory tenure has been granted to whoever does not wish to be governed by customary land tenure. The thesis evaluates customary land tenure in the context of agricultural development and examines the rights enjoyed by statutory landholders with a view to determining the suitability of statutory land tenure as an alternative to customary tenure. The conclusion that has been drawn is that while there is some evidence of the gradual adaptation of customary tenure to changing socio-economic factors, this change is too gradual and the need for State control of customary land is urgent.

The development of agricultural land depends not only on security of tenure and the means by which the State can compel proper land use, but also on the availability of capital. As such capital has been scarce for most farmers, credit facilities have assumed great importance. The thesis examines various aspects of the law relating to credit in terms of whether they facilitate access by peasant farmers to agricultural credit. Of special importance is the role of government-controlled credit institutions and the place for private banking institutions in the dispensation of loans to the agricultural sector. The conclusion reached is that credit is a double-edged sword and should only be granted where either adequate security is available, or

there is proven ability of the farmer to use it productively. It is also demonstrated that land reforms have diminished the use of land as security, leaving stop orders (whose legal force is questionable), as the most widely-used form of security.

While agricultural credit may be seen as a stimulant to production, there is evidence to support the view that some increase in production may be achieved even in the absence of credit if there are adequate marketing arrangements. Without organised marketing increased production cannot be sustained. Zambia inherited two statutory marketing bodies and since then the idea of a statutory marketing body has enjoyed popularity. Due to the difficulties that such statutory bodies have faced, however, government has shifted its emphasis from such bodies to marketing co-operatives and specialised companies for individual crops. The poor performance of the Zambian statutory marketing body, the National Agricultural Marketing Board, has been attributed to the broadly-defined functions it had to perform and the questionable role of government in its operations. The thesis examines the case for specialised marketing institutions in the context of the experience gained from the operation of the National Agricultural Marketing Board of Zambia. The powers of the Board and its relationship with government are spelt out in the Act creating the Board and provide a further instance in which government is utilising law to achieve its policy objectives.

The thesis ends with general conclusions regarding law and development, and, in particular, the extent to which various aspects of the law relevant to the pursuit of

agricultural development have promoted or hindered the attainment of government development objectives, and makes proposals for further reforms.

NOTES

1. Gann, L.H., A History of Northern Rhodesia, (Chatto and Windus, London, 1964), p. 50.

2. Gann cites the example of Zanzibar which exercised little control over the East African mainland. Gann, L.H., op. cit., p. 50.

3. Gann, L.H., op. cit., p. 58.

4. The boundary dispute was settled by arbitration with the King of Italy as the arbitrator in 1905: Report of the Commission Appointed to Enquire into the Financial and Economic Position of Northern Rhodesia, (Her Majesty's Stationary Office, London, 1938), p. 81.

5. The Zambia (State Lands and Reserves) Order, 1928-1964. Appendix 4 of the Laws of Zambia.

6. Williams, H.M., The Mining Law of Northern Rhodesia, (British South Africa Company, et al, London, 1963), p. 24.

7. Ibid., p. 25.

8. Among the reforms requested were that the collection and expenditure of public money should be subject to the approval and control of the Advisory Council; and that the Council should have a veto over all future legislation: Hanna, A.J., The Story of the Rhodesias and Nyasaland, (Faber and Faber, London, 1960), pp. 165-166.

9. Hailey, Lord, An African Survey, (Oxford University Press, London, 1957), p. 290.

10. Hanna, A.J., op. cit., p. 244.

11. Mason, P., Year of Decision, Rhodesia and Nyasaland 1960, (Institute of Race Relations, Oxford University Press, London, 1960), p. 17.

12. Hanna, A.J., op. cit., p. 251.

13. By 1959, Northern Rhodesia had suffered a net loss of more than #50 million to the rest of the Federation and by 1963 this had increased to #97 million: Roberts, A., A History of Zambia, (Heinemann, London, 1976), p. 214.

14. "Between 1953 and 1963, these amounted after tax to #260 million - far more than the recurrent expenditure of the colonial government during this period", Roberts, A., op. cit., p. 214.

15. Most of the statute laws currently in force are contained in the sixteen volumes of the 1972 revised

edition of the Laws of Zambia which came into effect on the 1st June 1972 (see Revised Edition of the Laws of Zambia (Date of Coming into Force) Order Statutory Instrument No. 117/1972).

16. Section 4(1) of the Zambia Independence Order, 1964 provided that:

> "Subject to the provisions of this section the existing laws shall, notwithstanding the revocation of the existing Orders or the establishment of a Republic of Zambia, continue in force as if they had been made in pursuance of this Order."

17. Cap 4.

18. Cap 5.

19. Cap 50.

20. Cap 45.

21. Cap 4, section 2.

22. Cap 50, section 12 and Cap 45, section 14. As to the interpretation of reception clauses see generally Allott, A.N., New Essays in African Law, (Butterworths, London, 1970), pp. 48-54, and Park, A.E.W., The Sources of Nigerian Law (Sweet and Maxwell, Lagos, 1963), pp. 30-33.

23. For instance the English Larceny Act, 1861 has been inapplicable on account of the Zambian Penal Code, cap. 146.

24. In the case of Nkomo v. Tshili (1973), Zambia Law Reports 102, the High Court reversed a decision of a magistrate on the grounds that he had relied on the provisions of the Affiliation Proceedings Act, 1957 of the United Kingdom.

25. Schedule to section 2 of cap 5.

26. Concerning definition, see Munalo v. Vengesai, (1974), Zambia Law Reports, p. 91 and p. 95, and Allott, A.N., op. cit., pp. 180-182.

27. Cap 54, section 12.

28. Cap 45, section 16.

29. One notable instance is the case of Kaniki v. Jairus (1967), Zambia Law Reports, p. 71.

30. Newbold, Sir Charles, "The Role of a Judge as a Policy Maker", Eastern Africa Law Review, 1969, 2, 2, 127-133.

31. Republic of Zambia, Central Statistical Office, Population Projections for Zambia, 1969-1999,

(Government Printer, Lusaka, 1975), p. 417.

32. Jackman, M.E., "Population Distribution and Density", in Davies, H. (ed.), Zambia in Maps, (University of London Press Ltd., London, 1971), pp. 42-46.

33. Makings, S.M., "Agricultural Change in Northern Rhodesia/Zambia", Food Research Institute Studies, 1966, 6, 2, 195.

34. Archer, D.R., "Rainfall", in Davies, H. (ed.), op. cit., p. 20.

35. Ibid.

36. Ibid.

37. Makings, S.M., op. cit., p. 196.

38. The expression "emergent farmer" is difficult to define, but Roberts and Elliott suggest that farmers who sell between 50% to 100% of their produce are emergent farmers: see Roberts, R. and Elliott, C., "Constraints in Agriculture", in Elliott, C. (ed.), Constraints on the Economic Development of Zambia, (East African Literature Bureau, Nairobi, 1971), p. 286.

39. See Republic of Zambia, Department of Marketing and Co-operatives, Annual Report 1983, (Government Printer, Lusaka, 1983), p. 16, Table 10.

40. Wilson, E., "Commercial Crop Production" in Davies, H. (ed.), op. cit., p. 72.

41. Siddle, D.J., "Land Use and Agricultural Potential" in Davis, H. (ed.), op. cit., p. 76.

42. Siddle, D.J., "Traditional Agricultural Systems", in Davis, H. (ed.), op. cit., p. 58. Cf. Schultz, J., Land Use in Zambia, Part 1 (Weltforum Verlag, Munich, 1976), pp. 50-58.

43. Siddle, D.J., "Land Use and Agricultural Potential", op. cit., p. 76.

44. Republic of Zambia, Office of the President, National Commission for Development Planning, Economic Report, 1984 (Government Printer, Lusaka, 1985), p. 99.

45. Ibid.

46. Ibid. For figures of maize imports from Malawi, Argentina, and the USA see, p. 130.

47. Economic Report, 1984, op. cit., p. 99.

48. Lombard, C.S. and Tweedie, A.H.C., Agriculture in

Zambia Since Independence, (Neczam, Lusaka, 1972), p. 72.

49. Seidman, A., "The Economics of Eliminating Rural Poverty" in Turok, B. (ed.), Development in Zambia, (Zed Press, London, 1979), p. 39.

50. Ibid.

51. Bates, R.H., Rural Responses to Industrialization, (Yale University Press Ltd, London, 1976), p. 41.

52. Ibid., p. 54.

53. Robert, K., "Zambian Agricultural Structure and Performance", in Turok, B. (ed.), op. cit., p. 139.

54. Great Britain, Colonial Office, Correspondence with Regard to Native Policy in Northern Rhodesia (Her Majesty's Stationary Office, London, 1930).

55. Dodge, D.J., Agricultural Policy and Performance in Zambia, (Institute of International Studies, University of California, Berkeley, 1977), p. 6.

56. Great Britain, Colonial Office, Memorandum on Native Policy in East Africa, (Her Majesty's Stationary Office, c.m.d. 3573, London, 1930), p. 3.

57. Dodge, D.J., op. cit., p. 15.

58. Northern Rhodesia, Ten-Year Development Plan for Northern Rhodesia, (Government Printer, Lusaka, 1951), p. 8.

59. These were (1) Bemba Plateau (Northern Province); (2) Luapula Province; (3) Eastern Province; (4) Serenje Area (Central Province); (5) Ndola Area (Copper belt); (6) North-West Area (Balovale and Mwinilunga); (7) Southern Area (Mazabuka, Lusaka, Gwembe, and Livingstone); (8) Central Area (Kabwe, Namwala and Mumbwa); (9) North Barotse Area; and (10) South Barotse Area. The two most significant programmes developed by the Colonial government in pursuit of agricultural and development objectives were the African Improvement Farmer Scheme, and the Peasant Farming Scheme discussed in connection with agricultural credit under "Native Lands".

60. Northern Rhodesia, Ten-Year Development Plan for Northern Rhodesia, op. cit., p. 30.

61. Ibid.

62. The annual cost was estimated at #45,000, but an undisclosed figure was to be added from the funds allocated for research.

63. Dodge, D.J., op. cit., p. 19.

64. Ibid.

65. Gann, L.H., op. cit., p. 188.

66. No. 11 of 1941.

67. Meek, C.K., Land Law and Custom in the Colonies (Oxford University Press, London, 1946), p. 115.

68. Gann, L.H., op. cit., p. 136. The total area amounted to 225,400 acres. For a more detailed discussion of these unofficial reserves see: Report of the Commission Appointed to Enquire into the Financial and Economic Position of Northern Rhodesia, (Her Majesty's Stationary Office, London, 1938, pp. 57-58).

69. Ibid.

70. Palmer, R., "Land in Zambia", Land and Labour Studies, (National Archives of Zambia, 1973), p. 57.

71. Stanley to Thomas, Despatch No. 233 dated 10/8/24, C.O. 795/41726/2/24.

72. Report of the Native Reserves Commission, East Luangwa 1924-25, National Archives of Zambia, ZP1/1/1.

73. Ibid.

74. Its composition was Sir P.J. McDonnell (Chairman), a judge of the High Court; J.M. Thompson, a District Commissioner (subsequently Secretary for Native Affairs), and Lt. Col. H.P. Hart, a farmer.

75. Report of the Native Reserves Commission, Railway Line, 1926. (National Archives of Zambia, ZP1/2/11), p. 70.

76. Palmer, R., op. cit., p. 59.

77. The Commission was chaired by Justice McDonnell and the other members were the District Commissioner Thompson (see footnote 74) and two farmers, R.W. Yule and Capt. J. Brown.

78. Report of the Native Reserves Commission, Tanganyika District, 1927, (National Archives of Zambia, ZP/1/3/3), p. 37.

79. The Commission was chaired by Mr. Justice McDonnell and included two farmers, Mr. J.N. Phipps and Mr. E.H. Lane-Poole.

80. Report of the Commission Appointed to Enquire into the Financial and Economic Position of Northern Rhodesia, op. cit., pp. 59-60.

81. Report of the Native Reserves Commission, East

Luangwa, 1924-25, (National Archives of Zambia, ZP/1/1/1), p. 38.

82. Palmer, R., op. cit., p. 57.

83. Meek, C.K., op. cit., p. 121 and Gann, L.H., op. cit., p. 218.

84. Palmer, R., op. cit., p. 57, and Dodge, D.J., op. cit., p. 8.

85. Hellen, J.A., Rural Economic Development in Zambia 1890-1964, (Weltforum Verlag, Munich, 1968), p. 135. Hellen states: "The false expectations which were raised by the settler dream were shattered finally by the Depression years."

86. Palmer, R., op. cit., p. 60.

87. Ibid.

88. Trapnell's ecological survey reports: The Soils, Vegetation and Agriculture of North-Eastern Rhodesia (Government Printer, Lusaka, 1943, and The Soils, Vegetation and Agricultural Systems of North-Western Rhodesia, (Government Printer, Lusaka, 1937), came after the Commissions had already submitted their reports.

89. Op. cit., p. 73.

90. Northern Rhodesia, Report of the Land Commission, (Government Printer, Lusaka, 1946), p. 2.

91. Ibid., p. 19.

92. Ibid., p. 51.

93. Palmer, R., op. cit., p. 62.

94. Ibid.

95. Ibid.

96. Gann, L.H., op. cit., p. 371.

97. G.N. No. 416 of 1942.

98. Ibid.

99. Ibid.

100. Ibid.

101. Palmer, R., op. cit., p. 63.

102. The Land Commission of 1946, chaired by Mr. L.W.G. Eccles. The other members were Mr. C.G. James and Sir Stewart Gore-Browne.

103. Report of the Land Commission. 1046, op. cit., p. 4.

104. Ibid.

105. Ibid.

106. For a table showing the quantum of different categories of land after the implementation of the policy of native trustlands see Meek, C.K., op.cit., p. 123, and Palmer, R., op. cit., p. 64.

107. Article 6A of the Zambia (State Lands and Reserves) Orders, 1928 to 1964.

108. Report of the Committee appointed to Enquire into the Development of the European Farming Industry (Government Printer, Lusaka, 1946), p. 36.

109. Gann, L.H., op. cit., p. 372.

110. Tel. from Sir J. Waddington to the Secretary of State, dated 14th December, 1945. Conf. No. 661, C.O. 795/130/45120/44.

111. Section 5(6).

112. Gann, L.H., op. cit., p. 373.

113. Dispatch No. 214 dated 3rd December, 1947, from the Secretary of State, Creech-Jones to Governor Rennie, C.O. 795/141/45120/48.

114. Dispatch No. 257 dated 20th November, 1947, from Secretary of State Creech-Jones to Governor Rennie, C.O. 795/141/45120/48.

115. Enclosure to Dispatch No. 176, dated 3rd September 1948, Rennie to Creech-Jones, C.O. 795/141/45120/48.

116. Dispatch No. 257, supra.

117. General Notice No. 147 of 1945. The other members of the Committee were Mr. L.W.G. Eccles, and Mr. J.S. Moffat.

118. Report of the Native Land Tenure Committee (Government Printer, Lusaka, 1945), Appendix 1.

119. Ibid.

120. Ibid., p. 3.

121. Ibid., p. 4.

122. Report of the Native Land Tenure Sub-Committee of the Native Development Board (Government Printer, Lusaka, 1945).

123. Ibid., p. 1.

124. Ibid.

125. Report of the Land Commission, op. cit., p. 5.

126. Ibid.

127. Report of the Land Commission on the Area Acquired by Government from the North-Charterland Exploration Company, (Government Printer, Lusaka, 1952).

128. Ibid.

129. Ibid.

130. Report of the Rural Economic Development Working Party, (Government Printer, Lusaka, 1960), p. 123.

131. Ibid., p. 124.

132. Ibid., p. 125.

133. "African Land Tenure Developments in Kenya and Uganda and their Application to Northern Rhodesia", Journal of African Administration, 1961, 13, 211-219.

134. Ibid., pp. 212-214.

135. Ibid., p. 213.

136. Ibid., p. 218.

137. Ibid., pp. 215-216.

138. No. 32 of 1962.

139. Ibid., section 4(2).

140. Ibid., section 5.

141. No. 58 of 1950.

142. The Native Reserves and Native Trustland (Adjudication and Titles) Ordinance, No. 32 of 1962, section 7(4).

143. Ibid.

144. Act No. 20 of 1975, s. 22.

145. Northern Rhodesia, Peasant Agriculture in the Petauke and Katete Areas of the Eastern Province of Northern Rhodesia (Agricultural Bulletin No. 15, R.N. Coster, Government Printer, Lusaka, 1958), p. 4.

146. Ministry of African Agriculture, Annual Report for the Year 1963, (Government Printer, Lusaka, 1964), p. 10.

147. Ibid.

148. Ibid.

149. Ibid.

150. Department of African Affairs, Annual Report for the Year 1955, (Government Printer, Lusaka, 1956), p. 32.

151. Ibid., Annual Report for the Year 1956, (Government Printer, Lusaka, 1957), p. 95.

152. Ibid., Annual Report for the Year 1955, (Government Printer, Lusaka, 1956).

153. Ibid., Annual Report for the Year 1953, (Government Printer, Lusaka, 1954), p. 9.

154. Dodge, D.J., op. cit., p. 27.

155. Ministry of Native Affairs, Annual Report for the Year 1960, (Government Printer, Lusaka, 1961), p. 55.

156. Dodge, D.J., op. cit., p. 23.

157. Makings, S.M., "Agricultural Change in Northern Rhodesia/Zambia: 1945-1965", Food Research Institute Studies, 1966, 6, 2, 216.

158. Anthony, K.R.M. and Uchendu, V.C.: "Agricultural Change in Mazabuka District, Zambia", Food Research Institute Studies, 1970, 9, 3, 226.

159. Makings, S.M., op. cit., p. 217.

160. Ibid.

161. Ibid.

162. Ministry of African Agriculture, Annual Report for the Year 1963, (Government Printer, Lusaka, 1964), p. 10.

163. Ibid., Annual Report for the Year 1955, (Government Printer, Lusaka, 1964), p. 10.

164. Ibid.

165. No. 66 of 1957.

166. S.10 (g).

167. S.15.

168. Northern Rhodesia, Department of Agriculture, An Economic Survey of Commercial African Farming Among the Sala of the Mumbwa District of Northern Rhodesia, (by Morgan Rees, A.M. and Howard, R.H.),

Agricultural Bulletin No. 10 (Government Printer, Lusaka, 1955), p. 25.

169. Baldwin, R.E., Economic Development and Export Growth, (University of California Press, Berkeley, 1966), p. 167.

170. Ibid., p. 222.

171. Ibid., p. 203.

172. Report of the Rural Development Working Party, op. cit., p. 96.

173. Ibid., p. 97.

174. Report Upon Native Affairs for the Year 1928, (Government Printer, Lusaka, 1929), p. 9.

175. Report Upon Native Affairs for the Year 1929, (Government Printer, Lusaka, 1930), p. 10.

176. Baldwin, R.E., op. cit., p. 150.

177. Milligan, S., Report on the Present Position of the Agricultural Industry and the Necessity, or Otherwise of Encouraging Further European Settlement in Agricultural Areas, (Government Printer, Livingstone, 1931), pp. 1-35.

178. Department of Agriculture, Annual Report for the Year 1931, (Government Printer, Livingstone, 1931), p. 16.

179. No. 20 of 1935.

180. S.11.

181. A "producer" was defined in section 2 as anyone who by himself or by means of his agents or servants grew more than one acre of maize. The exceptions being: i) a "native" grower who disposed of his maize to a trader was not deemed to be a producer of that amount of maize; and ii) where a member of a co-operative society delivered his maize to the society, it was not the member, but the society, that was deemed to be the producer. A "participation certificate" entitled the producer to some share in the "pool" or quota designated for the European farmers.

182. Baldwin, R.E., op. cit., p. 151.

183. Report of the Maize Sub-Committee of the Northern Rhodesia Agricultural Advisory Board, (Government Printer, Lusaka, 1935), p. 22.

184. Report of the Commission Appointed to Enquire into the Financial and Economic Position of Northern Rhodesia, op. cit., p. 227.

185. Ibid.

186. Report of the Maize Sub-Committee, op. cit., p. 7.

187. Annual Report of the Maize Control Board: 1952-1953, (Government Printer, Lusaka, 1954), p. 3.

188. Ocran, M.T., Towards a Jurisprudence of African Economic Development: A Case Study of the Evolution of the Structure and Operations of Zambia's Food Crop and Cotton Marketing Boards from 1936 to 1970, (University of Wisconsin, PhD Thesis, 1971, Microfilm), p. 75.

189. Ibid., p. 77.

190. No. 4 of 1952.

191. G.N. No. 137 of 1953.

192. Ocran, M.T., op. cit., p. 152.

193. Ibid.

194. Ibid., p. 154.

195. Ministry of African Agriculture, Aspects of the African Agrarian Economy in Northern Rhodesia, Agricultural Bulletin No. 17 (by J. Hadfield), (Government Printer, Lusaka, 1960), p. 29.

196. No. 23 of the Statute Law of the Federation of Rhodesia and Nyasaland, CAP A.L. 10 of the Laws of Northern Rhodesia.

197. Ibid., s.10.

198. Ministry of Africal Agriculture, The Marketing of African Agricultural Produce in Northern Rhodesia, Agricultural Bulletin No. 18 (by J. Hadfield), (Government Printer, Lusaka, 1961), p. 20.

199. Lombard, C.S. and Tweedie, A.H.C., op. cit., [p. 13.

200. Ibid., p. 14.

201. Ibid.

202. Northern Rhodesia Department of Agriculture, Peasant Farming in the Peauke and Katete Areas of the Eastern Province of Northern Rhodesia, op. cit., p. 32.

203. Lombard, C.S. and Tweedie, A.H.C., op. cit., p. 14.

204. Ibid.

205. Ibid., p. 15.

206. East African Royal Commission 1953-1955 Report, (Her Majesty's Stationary Office, London, 1966 Reprint), p. 68.

207. Ibid.

208. Ministry of African Agriculture, Aspects of the African Agrarian Economy in Northern Rhodesia, op. cit., p. 19.

209. Report of the Rural Economic Development Working Party, op. cit., p. 89.

210. Ibid., p. 91.

211. Dispatch No. 525 dated 12th January 1926: Stanley to Amery, CO795/10/1423/26.

212. Ibid.

213. Gann, L.H., op. cit., p. 215.

214. Ibid.

215. Ibid.

216. Report of the Land Tenure Committee, 1943, (Government Printer, Lusaka, 1943), p. 2.

217. Report of the Commission of Inquiry into the Future of the European Farming Industry in Northern Rhodesia: On the Issue of Tenure of Agricultural Land, (Government Printer, Lusaka, 1954). This Commission also reported that nearly three million acres were under freehold and one and a quarter million (less than half) were under leasehold, p. 11.

218. Report of the Select Committee on the Constitution and Terms of Reference of the Land Board, (Government Printer, Lusaka, 1950), p. 5.

219. Ibid.

220. Department of Lands and Surveys, Annual Report for the Year 1948, (Government Printer, Lusaka, 1949), p. 5.

221. The discussion of these criteria are contained in Chapter Two covering land control during the post-independence period.

222. Land Board, Annual Report for the Year 1950, (Government Printer, Lusaka, 1951).

223. Ibid., p. 2.

224. Ibid., p. 3.

225. Ibid.

226. Report of a Commission of Inquiry into the Future of the European Farming Industry of Northern Rhodesia, (Government Printer, Lusaka, 1954), p. 8.

227. Department of Lands and Surveys, Annual Report for the Year 1947, (Government Printer, Lusaka, 1948), p. 2. The Report says that out of a total of 339 applications for farms and smallholdings, 152 were approved by the Board, and a further eight were still being considered by the close of the year (p. 3).

228. Ibid., Annual Report for the Year 1948, (Government Printer, Lusaka, 1949), p. 5.

229. No. 51 of 1956.

230. No. 57 of 1960.

231. Minute dated 6th of April 1959 from the Governor to the Secretary of State for Lands, Lands Department, file ref: LA/11,001/6/1.

232. Ibid.

233. Meek, C.K., op. cit., pp. 128-130.

234. The expression "beneficial use" or "beneficial occupation" has usually been taken to involve the keeping of an acceptable proportion of the land under regular cultivation: Meek, C.K., op. cit., p. 129.

235. Meek, C.K., op. cit., p. 129.

236. Minute dated 6th April 1959 from the Governor to the Secretary of State for Lands, op. cit.

237. Department of Surveys and Land, Annual Report for the Year 1954, (Govt. Printer, Lusaka, 1955), p. 6 and the Annual Report for the Year 1955, (Government Printer, Lusaka, 1956), p. 6.

238. Minute dated 5th November 1959 from Land Board Secretary to the Minister for Lands: ref: LA/11,0001/6/1.

239. Cap 239 of the Laws of Northern Rhodesia: The Ordinance established a Natural Resources Board to exercise general supervision of natural resources and to recommend to the Minister legislation for the proper conservation, use, and improvement of natural resources.

240. No. 59 of 1953: "An Ordinance to provide for the eradication of noxious weeds." The Ordinance placed a duty on occupiers to report the presence of noxious weeds and made it an offence to fail to do so. Inspectors were empowered to enter premises to

check for the presence of and eradicate noxious weeds.

241. No. 8 of 1948.

242. No. 51 of 1956, section 56(b).

243. No. 57 of 1960, section 44(1) (a).

244. See above, p.89 . It is rather difficult to assess the extent to which farmers, in all, took advantage of this opportunity, but if 1961 is indicative of the general trend, then it was a popular measure. During 1961 sixteen lessees secured options to purchase their holdings under the Ordinance: Department of Lands, Annual Report for the Year 1961, (Government Printer, Lusaka, 1962), p. 3. A steady decline was to be expected in the forthcoming years, however, owing to anxiety preceding political independence set for October 24, 1964.

245. No. 51 of 1956. It came into operation on 14th March 1957: General Notice No. 66 of 1957.

246. Northern Rhodesia Hansard No. 101J, Col. 431 and 432.

247. No. 57 of 1960.

248. This Union represented farmers in the Federation of Rhodesia and Nyasaland, but there were Councils in each territory handling the day to day business of the Union.

249. Annual Report of the Land Board for the Year 1950, (Government Printer, Lusaka, 1951), p. 3.

250. No. 57 of 1960, s.19.

251. Report of the Commission of Inquiry into the Future of the European Farming Industry in Northern Rhodesia: On the Issue of Tenure of Agricultural Land, op. cit., p. 5.

252. For a description of what constituted permanent improvements, see the First Schedule.

253. Under Section 25(1) a lessee was entitled to obtain an option to purchase on fulfilment of the following conditions:

"a) not less than seven years have elapsed since the date of commencement of his lease;
b) all the provisions of this Ordinance which are applicable to him and all the terms and conditions of his lease have been complied with;
c) permanent improvements valued by the Board at not less than £10,000 have been effected on his holding:

Provided that where the holding is less than 1,000 acres in extent the minimum value of the permanent improvements for the purposes of this paragraph shall be £5,000 or such amount as bears the same proportion to £10,000 as the acreage of the holding bears to 1,000 whichever is the greater."

254. S.24(1).

255. S.31(2).

256. Ibid.

257. Northern Rhodesia, Hansard, No. 89, 2nd October, 4th October, 1956, Column 33.

258. S.22(3).

259. Crown grant is defined in Section 11 as "a grant in fee simple made under and subject to the provisions of this Part (ie. Part III: Alienation of Agricultural Land) of this Ordinance."

260. S.36(1).

261. S.36(2).

262. S.36(5).

263. S.36(4).

264. S.36(10).

265. Cap 292 of the Laws of Zambia, 1972 Edition.

266. Interview with Deputy Commissioner of Lands, Mulungushi House, Land Department, Lusaka, 10th April 1985.

267. Hailey, Lord, An African Survey, op. cit., p. 773.

268. Report of the Select Committee on the Constitution and Terms of Reference of the Land Board, op. cit., p. 12.

269. Report of the Commission of Inquiry into the Future of the European Farming Industry in Northern Rhodesia, op. cit., p. 7.

270. Northern Rhodesia, General Notice, No. 675 of 1947.

271. Land Board, Annual Report for the Year ended 1952, (Government Printer, Lusaka, 1953), p. 4. Cf. Hailey, Lord, op. cit., p. 773.

272. Ibid.

273. Repealed by the Agricultural Credits Ordinance No. 28 of 1961. Stop orders had in fact been used before the Ordinance: Northern Rhodesia, Colonial Reports, 1950,

(Her Majesty's Stationary Office, London, 1951), p. 48.

274. No. 16 of 1952.

275. The other members of the Committee were Mr. T.L. Hately, Secretary of the Land and Agricultural Bank of Kenya, and Mr. V. Memety, Secretary of the Land and Agricultural Bank of Southern Rhodesia.

276. Report of the Board of the Land and Agricultural Bank of Northern Rhodesia for the Financial Year Ended 30th June 1954, (Government Printer, Lusaka 1954), p. 3. The report also states that this was not the first Land Bank to operate in Northern Rhodesia, as between 1912 and 1923, loans were granted to farmers by the Rhodesia Land Bank Ltd, the share capital of which was wholely owned by the BSA Company. Little business appears to have been done in Northern Rhodesia, however, and the Bank was liquidated and removed from the register of companies on the 7th of January, 1948.

277. The first Board members appointed by the Governor-in-Council under General Notice No. 889 of 1953 were: The Financial Secretary, Mr. R.W. Dean; Mr. G.R. Burden; Mr. A. Girling, OBE, and Mr. W.H. Wroth, OBE.

278. Report of the Land and Agricultural Bank for the Year 1953, (Government Printer, Lusaka, 1954), p. 3.

279. S.4.

280. S.19.

281. S.22.

282. Under section 21, the Bank could advance money to a farmer or an agricultural co-operative society on the security of land, but without necessarily requiring them to execute a mortgage. Such charges took the form of a memorandum of agreement which, when registered, created a charge upon the land enforceable "as if a mortgage had been executed".

283. S.24.

284. S.34.

285. S.27.

286. S.30(3).

287. Annual Reports of the Board of the Land and Agricultural Bank, 1955 to 1962.

288. Ibid.

289. Report of the Board of the Land and Agricultural Bank for the Year Ended 30th June, 1958, (Government

Printer, Lusaka, 1959), p. 3.

290. Report of the Board of the Land and Agricultural Bank for the Year Ended 30th June 1961, (Government Printer, Salisbury, 1962), p. 4.

291. Report of the Board of the Land and Agricultural Bank for Year Ended 30th June 1958, (Government Printer, Lusaka, 1959), p. 1.

292. Report of the Board of the Land and Agricultural Bank for the Year Ended 30th June 1963, (Government Printer, Lusaka, 1964), p. 2.

293. S.2. Again the definition of farmer: "any person ... who as the tenant or owner of agricultural land, cultivates such land for profit", excluded Africans on reserves and trustlands either for the reason that they were not owners or tenants of agricultural Crown land or that they did not cultivate for profit.

294. S.4(2).

295. Ibid., subsection 4.

296. Annual Report on the Social and Economic Progress of the People of Northern Rhodesia, 1931, (Her Majesty's Stationary Office, London, 1932), p. 14.

297. No. 23 of the statute law of the Federation of Rhodesia and Nyasaland.

CHAPTER TWO

LAND LAW AND THE AGRICULTURAL DEVELOPMENT OF STATE LAND

A. INTRODUCTION

The pursuit of agricultural development in underdeveloped countries is a complex and multi-faceted problem. It is not contended in this chapter that land tenure reform is the sole key to agricultural development. As James has rightly observed, "land tenure rules by themselves grow no rice, build no houses, create no goods", but they, nevertheless, "create the framework within which the economic, social and other energies of a country may be most fruitfully mobilized".[1] Land law is no less important to the stability of the country, because the well-being of its citizens depends on the rules which regulate the manner in which land can be owned and used. In developing countries, the recurrence of famine has drawn the attention of agriculturists and lawyers alike. A great deal of attention, particularly from lawyers and other students of land tenure, has been focussed upon the customary land tenure systems which have been perceived as inhibitive of agricultural modernization, an argument examined in the succeeding chapter. Little seems to have been done to examine local statute law in the context of its suitability to promote land development.

Chapter One has shown that through the policy of native reserves, the colonial government dispossessed many Africans

of land which was subsequently alienated to European settlers. A similar policy was pursued in the then Southern Rhodesia (Zimbabwe) and Kenya.[2] But, unlike Kenya, Zambia has not instituted any comprehensive programme for the re-settlement of Africans on the lands from which they had been removed.[3] Instead, the President promised the land owners that there would be no interference with their property rights, unless the land was not being properly exploited in accordance with existing law.[4] At the time, this interference could only be legally justified in respect of agricultural land held on leasehold tenure, but not to undeveloped freehold land. Government was powerless to deprive a freeholder of land because the only legislation under which compulsory acquisition could be effected, the Public Lands Acquisition Act,[5] permitted such acquisition only in cases where the State required the land to be used for public purposes, as statutorily defined. Nevertheless, the change in the personnel of land allocating authorities, local authorities, and the Lands Department ensured that the division of land along racial lines ceased.[6] In 1970, the government replaced the Public Lands Acquisition Act with the Lands Acquisition Act[7] which broadened the scope within which, and the purpose for which, land could be compulsorily acquired. The motive was to enable the State to re-possess land which was either not being utilised, or developed so that it could alienate the same to developers. It was also hoped that the threat of compulsory acquisition would motivate the owners of freehold land to develop it.

By contrast, leasehold land could be controlled by government through terms and covenants in the lease. There

were two types of land held on leasehold tenure - scheduled and non-scheduled. Scheduled leasehold land comprised farms or portions of farms which had been declared as falling under the Agricultural Lands Act. Non-scheduled leasehold land comprised farms which had not been so declared. Further control over land use is now provided by the Land (Conversion of Titles) Act, 1975[8] which converted all existing estates to leasehold estates of a term of a hundred years, thereby extending State control to all categories of land. Although the land reforms introduced by the Land (Conversion of Titles) Act, 1975 are, in theory, applicable to all categories of land, it is difficult to see how they can, in practice, be realised in the Reserves and Trust Land, where land tenure continues to be governed, largely, by customary laws.

By making title to land and, therefore, security of tenure dependent on land use, Zambia, like Tanzania has not followed the Kenyan policy which, while continuing the freehold system, did, by separate legislation, impose on landholders development requirements, the non-compliance with which might lead to dispossession.[9] Which is the better system is a moot point since both systems provide, ultimately, for dispossession, but the Kenyan system, by allowing market value to be included in the amount of compensation payable, does not seriously address the problem of land speculation.[10]

This chapter attempts to examine the legislation under which the State has sought to gain or maintain control over land utilisation with a view to ensuring the development of agricultural land on State Land. It opens with a discussion

of the practical significance of the Agricultural Lands Act as a land control measure, and then examines the suitability of the legislation on compulsory acquisition as a means of releasing undeveloped land for the use of genuine farmers. The discussion then centres on the background and effect of the land tenure reforms introduced in 1975 under the Land (Conversion of Titles) Act. Attention is also drawn to the practical difficulties that confront the enforcement of land control legislation and the possible measures that should be taken to alleviate some of the problems that have arisen. The combined effect of the Agricultural Lands Act and the Land (Conversion of Titles) Act is to encourage the development of agricultural land through (1) the prescription of minimum development requirements; (2) the imposition of development covenants in leases of agricultural land; and, (3) the prescription of criteria to be taken into account in determining whether consent to deal in land should be granted or withheld.

Prior to discussing land control under the Agricultural Lands Act, a brief mention must be made of the structure of land administration which has resulted in the existence of two parallel systems of review and control of leases and leasehold transactions concerning agricultural State Land. Following the vesting of all land in the President,[11] the President is the titular owner of all land. Land administration, however, falls under the Ministry of Lands and Natural Resources comprising the Department of Natural Resources (which for the present does not concern us), and the Department of Lands. The Lands Department is responsible for both customary land (Reserves and Trust

Land) and State Land, although the department exercises little control over the former. The department is headed by the Commissioner of Lands, to whom the President has delegated his authority under the Land (Conversion of Titles) Act.[12] While the Commissioner of Lands is responsible for all land, an exception exists in the case of land falling under the Agricultural Lands Act (hereinafter referred to as "scheduled land" [13]). This category of land is administered by the Agricultural Lands Board established under the Act and directly responsible to the Minister of Lands. The Commissioner of Lands, although a member of the Agricultural Lands Board, has no more power than the other members of the Board. The Board exercises its own system of control but its powers are restricted to scheduled land. Nonetheless, because the Board does not have administrative facilities it has to rely on the Department of Lands and, hence, the Commissioner of Lands, for the day to day performance of the Board's functions, notably, the inspection of farms.

The enactment of the Land (Conversion of Titles) Act has led to the existence of another system of control, relating to both non-scheduled land, and scheduled land. With respect to non-scheduled land, the Commissioner of Lands, acting on behalf of the President is the sole controlling authority subject, generally, to appeals being made to the Minister and, subsequently, the President. For scheduled land, the Agricultural Lands Board will exercise control under the Agricultural Lands Act in the first instance, and then the Commissioner of Lands will also exercise control under the Land (Conversion of Titles) Act.

Conflicts are bound to occur in many cases of double control owing to conflicting criteria and also inconvenience caused through delay. One serious limitation on the Department of Lands is that while they have on their staff land officers, the establishment does not provide for valuers. The task of valuation is passed on to the Ministry of Provincial and Local Government which is equally hard pressed for manpower.

B. CONTROL UNDER THE AGRICULTURAL LANDS ACT

As already mentioned, this Act only applies to land which has been declared to fall under it, referred to as scheduled land. No figures are available to indicate the ratio of scheduled land to non-scheduled land, but there is general agreement in the Department of Lands that the total area of scheduled land is considerably less than the total area of non-scheduled land.[14] As the Agricultural Lands Act is a legacy of the colonial government, the discussion relating to the statutory provisions prescribing the functions and powers of the Agricultural Lands Board is contained in the previous chapter. The first chapter also discussed the statutory requirement of beneficial occupation, including personal residence.

The Agricultural Lands Act had only been in force for four years at the time Zambia gained independence. In that

short time, it is difficult to gauge the impact of the Act on land development. The discussion that follows examines the impact of the Act as administered by the Agricultural Lands Board. Of crucial importance are (1) the relationship between the Minister and the Board; and (2) the way in which the Board interprets the Act and the criteria it uses in alienating land and in granting consent to dealings in land. Further, attention is drawn to problems relating to the discharge by the Board of its functions under the Act. The criteria provided in the Act for the selection of those to whom land should be alienated reflect a particular set of values which may not be shared by all the members of the Board. Their values, therefore, have a bearing on how seriously they will treat these guidelines or requirements. Attention, must also be focussed on the composition of the Board, in so far as there might be wide differences of opinion between members who are public officers and members who are private individuals. In such an event, the proportion of public officers to private members of the Board assumes great importance.

1. Composition of the Agricultural Lands Board

Under section 4(2) the composition of the Board is as follows:

> "a) a chairman appointed by the Minister to be other than a public officer;
> b) three public officers appointed by the Minister;
> c) two persons selected by the Minister from a panel of not more than four names, submitted to him by the Commercial Farmers Union (now renamed Commercial Farmers Bureau);
> d) such additional members, not exceeding

> five in number, appointed by the Minister as the Minister may deem desirable:
> Provided that at no time shall the Board be so constituted as to have a majority of public officers."

While public officers may be appointed either by name or office, private members are appointed by name only. The tenure of membership is three years for the chairman and two years for the other members with provision for re-appointment for a second term.[15]

The public officers who ordinarily serve on the Board are the Commissioner of Lands; the Director of Agriculture; and the Conservator of Natural Resources. Confusion is brought into the system, however, when the Minister appoints heads of parastatal bodies as members of the Board under (d). The expression "public office" is not defined by the Act. Perhaps it was unnecessary at the time the Act was being considered because the colonial government created no parastatal bodies. The post-independence era, however, has seen the emergence of parastatal bodies with company administrators handling public funds. The directors and general managers of these semi-public institutions are performing public duties and are thus public officers in the literal sense. The General Manager of the Agricultural Finance Company, a parastatal body, has, at different periods, been a member of the Board. Even when he is not appointed a member, he attends meetings of the Board but without the power to cast a vote. His attendance is important because in most cases, the land which is the subject of the application for consent is mortgaged to the Agricultural Finance Company, and thus the company must have some say in the selection of the person who will take it

over.[16] When he is a member, the problem is whether he is appearing as a public officer or as a private member.

The position of a head of a parastatal body as a member is important not only with respect to compliance with section 4(2), but also section 6(2) which states that four members of whom at least two, are not public officers shall constitute a quorum. An appeal may lie, therefore, to the Minister on the grounds that the Board was not properly constituted because there were more public officers than non-public officers.[17] The majority of non-public officers who have been members of the Board have been successful farmers. Their experience is, no doubt, invaluable to the Board, and hence, the commercial farming community at large. The provision for the compulsory appointment of, at least, two members from a selection of four names proposed by the Commercial Farmers Bureau ensures the continued representation of commercial farmers. But the requirement that the number of non-public officers must, invariably, be at par or even in excess of the number of public officers has the effect of putting scheduled land under the control of private farmers. This could have been used in the colonial days to keep scheduled agricultural land squarely under the control of the European farming community who were, by far, in the majority on State Land. In fact, the original 1960 version of the Act provided for the Governor (in place of the Minister) to appoint only two additional members. These were the Manager of the Land and Agricultural Bank, and one African. In June 1963, the Minister proposed to delete the limitation to two members to "encourage wider African settlement on Crown Land".[18] But

under the Agricultural Lands (Amendment) Ordinance, 1963, the limitation was preserved, but the number was increased from two to five.[19]

With the attainment of independence and Zambianization of the Board, the underlying rationale for the composition of the Board must be reviewed. There is no doubt regarding the need for the representation of the commercial farmers through nominees of the Commercial Farmer's Bureau, but it is also important that the representation of farmers be organised on a provincial basis so as to promote the even development of agricultural land in all the provinces.

With regard to the requirement that the Board be composed of fewer public officials than non-public officials, although its rationale, the control of agricultural land by the European settler community, no longer holds good, it should be retained for different reasons. Agricultural land has become a burning national issue and, in such circumstances, the possibility of accusations of partiality in the grant of land is likely to arise. Suspicions may be easily aroused where only one individual, be it a government official or otherwise, makes all the decisions. This is not the case where decisions are made by a board, especially, if it is so constituted as to have a majority of non-public officials.

2. Distribution of Power Between the Board and the Minister

The general functions and powers of the Board are

contained in section 8 of the Act, briefly covered in the first chapter. No problems relating to the relationship between the Board and the Minister arose during the colonial period perhaps because there was too little time within which to implement the Ordinance. After independence, the issues which have arisen are, (a) whether the Board operates only in an advisory capacity and the Minister is the primary authority and, (b) if not, what the scope of the Minister's appellate jurisdiction is.

Section 9 of the Act provides:

> "(1) Subject to the provisions of this section the decision of the Board shall be final in respect of any matter on which the Board is by or under this Act empowered to decide.
>
> (2) Any person aggrieved by a decision of the Board may at any time, but not later than twenty-eight days after the service upon him of formal notice thereof, appeal to the Minister against the decision on any of the following grounds but not otherwise:
> a) that the decision is contrary to the provisions of this Act;
> b) that the decision is contrary to public policy or to the public interest;
> c) that the decision is an improper exercise of a discretion entrusted to the Board;
> d) that the decision is against the weight of the evidence submitted to the Board.
>
> (3) The Minister may, upon an appeal under subsection (2) or of his own instance review any decision of the Board on any of the grounds set out in subsection (2), or on the ground that such decision is contrary to any directions of policy given by the Minister to the Board."

Section 9(1) shows that there are certain matters on which the Board has the exclusive power to make decisions and others on which the Board can only make recommendations.

The power to decide whose application for land is to be approved under section 17 and the grant of consent to assignments or dealings in land under section 24 are specifically vested in the Board. One would, therefore, regard the Board's decisions on the above matters as final. Between 1974 and 1975, however, many of the Board's decisions on the above matters were reversed. The three cases cited below illustrate the numerous occasions when ministerial interference checked the Board's exercise of its powers under the Act.

The first case was an application for consent to assign a farm situated in Lusaka.[20] The Board approved the application inspite of the fact that the proposed assignee had already taken possession of the farm prior to securing the consent of the Board. The Board took the view that the proposed assignee was not to blame because he had taken possession of the farm as a caretaker, while awaiting the consent of the Board through his solicitors, who had, apparently, delayed submitting the application for consent. The Board was also apprehensive that the proposed assignee would suffer hardship if consent was refused since he had already spent a substantial sum renovating the farm.

The second case was also an application for consent to assign a farm, in Mkushi.[21] According to the Board, the proposed assignee had been granted a one-year sublease by the Board in 1970 at the end of which he applied for consent to purchase the farm. His solicitors, however, failed to bring the application before the Board. Meanwhile, the proposed assignee continued to use the farm, having already deposited the purchase price with his solicitors.

The third case, also an application to assign a farm, in Kabwe was similar to the first in that the proposed assignee had been in possession of the farm for three consecutive seasons on a caretaker basis at the end of which the farm owner agreed to sell the farm to him.[22]

In all the three cases, the Minister for Lands and Natural Resources disapproved on the ground that it was against government policy for leasehold land to be occupied prior to authority being granted by the government.[23] In their Minutes of the 9th and 10th of July 1974, the Agricultural Lands Board noted:

> "Although members expressed their appreciation for the Honourable Minister's decisions on the Board's recommendations, the Board was, however, surprised to note that some applications which had passed through it had been turned down even when the Board was fully satisfied with a particular applicant. Members felt that if the Honourable Minister was not fully satisfied with any application, he should ask the Board for clarification or further information on certain of the points he may not be happy about before rejecting the application."[24]

The Acting Commissioner of Lands had the occasion to address the Board on Tuesday the 28th January 1975 regarding the manner in which the Board had carried out its duties. Interpreting section 9(1), he said the Board was entitled to make final decision in respect of any matter which the Board was, under the Act, empowered to decide. It was, therefore, he continued, not in accordance with the Act for the Board merely to recommend any matter to the Minister for final decision. He concluded:

> "There was in fact no policy directive to the effect that the Minister would give final decision on any matters on which the Board has made recommendation or decision, as the case may be."[25]

After mentioning the grounds on which an appeal to the Minister may lie against the decision of the Board under section 9(2), the Commissioner of Lands added that the provisions in the Act were conflicting and needed amendment.

It is pertinent to point out that although the Minister is empowered under section 8(2) to make directives on matters of policy to the Board, no Minister responsible for lands has ever availed himself of this opportunity, unless ministerial intervention on an ad hoc basis can be said to be a policy directive. There were, therefore, no policy directives which the Board could be said to have ignored in their consideration of the three cases reversed by the Minister, so as to justify his intervention. But the legal opinion expressed by the Acting Commissioner of Lands ignores the impact of section 9(3) which empowers the Minister "upon an appeal under subsection (2) or of his own instance" to review any decision of the Board on the grounds stated in subsection (2).

It would be stretching the meaning of section 9(3), however, to require the Board to submit its decisions to the Minister in every instance for purposes of review as is the practice at present. Section 9(3) would, it is submitted, cover an improper exercise of the Board's functions where there is no formal appeal by an aggrieved applicant or proposed assignee but there is sufficient evidence, or there has been a discovery of new facts to warrant review. The present practice of submitting all the decisions of the Board to the Minister for approval renders the expression "final" under section 9(1) meaningless. This view can be supported on the basis of the Minister's address to the

Legislative Council when he introduced the Agricultural Lands Ordinance of 1960. Commenting on the improvements made by this Ordinance over the 1956 Ordinance the Minister said:

> "Certain provisions have, therefore, been re-drafted in order to place the powers of decision firmly with the Board ... As the Minister responsible, I shall have powers of direction on matters of general or special government policy, but I shall not have the power to intervene in individual cases except when the Board has overlooked some provision in the Ordinance or some direction of policy."[26]

The Minister went on to state that as a precaution against the remote possibility of a serious error, he should be given the power to intervene if the Board makes a decision which is "so obviously wrong on the facts that the decision cannot reasonably be allowed to stand".[27] It is submitted, therefore, that the power of the Minister is merely a reserve power to be used in exceptional circumstances, unless there is an appeal against the decision of the Board. But the Act is not as clear as one would like. Hence, the Commissioner of Land's lament that the provisions were conflicting and needed amendment is justified. Such an amendment could also clarify the issue as to who is the final authority and in what matters. One may also suggest that the Board be represented or asked to explain its decisions to the Minister when the latter is hearing an appeal against or reviewing the Board's decision.

In spite of the call by the Board that it be consulted by the Minister so that it has the opportunity to defend its decisions, no notice has been taken. As late as August 1982 the Minister's exercise of appellate authority was

deprecated. At its meeting held on the 12th and 13th August 1982 the Board rejected an application for permission to assign three farms in Chisamba to Dar Farms and Transport Ltd. Dar Farms successfully appealed against the decision on the ground that it was already in occupation of the farms and had since made considerable improvements thereon.[28] The Board took the view that it was very unfair for its decisions to be rescinded by the Minister after it had scrutinised all the cases. The danger, as the Board saw it, was that its position would be made difficult as people, whom the Board had denied land or consent, would flock to the Minister's office for assistance.[29] The Board also reiterated its earlier plea that the Minister should "whenever there is an appeal before him, ensure that he is fully briefed by either the Commissioner of Lands or the Agricultural Lands Board, before making a decision on the appeal".[30]

Section 9(4) states: "When exercising his powers under this section, the Minister may make such order as in the circumstances he may consider just, and such order shall be final". The finality of the Minister's decision has not prevented what has been seen as political intrigue from undermining the administration of scheduled agricultural land. This can best be illustrated by the case of farm no. 2109 in Petauke. The facts of this case were that the Tobacco Board of Zambia (TBZ), the lessees, advertised the farm for purposes of assignment. After considering the applicants, TBZ approved one application and, thereafter, applied to the Agricultural Lands Board for consent to assign to the successful applicant which the Board approved.

But Petauke District Council whose application was rejected by TBZ on the grounds that it had been received after the closing date for receiving applications, appealed to the Minister against the decision of the Board. The Council's only contention was that they were prevented from applying for the farm to the TBZ by the management of TBZ. The Minister considered the appeal and directed that the farm should be reserved by the government for the use of the Council.

It subsequently became known to the Board, however, that the Council's appeal had been made known to members of the Central Committee of UNIP, the Party's policy-making body, and to the Prime Minister, both of whom may have made such representations as to affect the Minister's decision. The Board noted in its minutes that it was appointed by the Minister "and the Minister should, therefore, respect its decisions".[31] After further consultations between the Minister and the Commissioner of Lands, the farm was finally alienated to the successful applicant and not the Council.[32] In spite of the Minister's decision, Petauke District Council lodged a further appeal to State House. In the meantime, the Prime Minister informed the Board Chairman that he "would not rest until the Council acquired the farm".[33] The possibility of political pressure being brought to bear on the Minister, from above, will not only lead to further negation of the Board's autonomy, but also will throw open to doubt the extent to which the decisions of both the Board and the Minister can be regarded as final. Another pertinent question on the effect of the word "final" in section 9(4) is whether the jurisdiction of the courts is

excluded. In most legislation where the courts' jurisdiction has been excluded, the exclusionary clause has been express. In the absence of an express exclusionary clause, the implication must be that while the court may not adjudicate on the merit of the decision, it may adjudicate on compliance with procedure and the common law principles of natural justice. On none of these grounds, however, would Petauke District Council have been successful.

3. The Agricultural Lands Board and the Criteria for Land Alienation

The process of land allocation provides one of the most important opportunities for the Board to control agricultural land. The Board exercises its control in two respects: one is where an individual applies for vacant land falling under the Act, and the other is where a holder of leasehold land, who wishes to assign such land together with improvements on it, applies to the Board for consent to do so. The extent to which the Board can control land in these two respects depends on the procedure followed in making applications for consent.

Where an individual farmer wishes to sell his farm, he advertises the sale and all the applicants for the farm attend the interview whereby the Board determines who is the best qualified for the farm and then consents to the farm being assigned to him. This is not so with interested parties such as the Tobacco Board of Zambia and the

Agricultural Finance Company. Under its schemes the Tobacco Board is the lessee which sublets to participants whom it assists financially so that they can promote the production of tobacco. In the case of the Agricultural Finance Company, it will have lent money for the development of the farm on the security of a mortgage. In both cases the two institutions are interested in who will be the approved tenant of the farm. They, therefore, advertise their farms and make their choice as to which applicant is suitable and then apply for consent of the Board to assign to the applicant of their choice. In some cases, such an applicant will already have paid them the purchase price which they will have inflated to cover loans outstanding on the farm. While such an applicant may be financially suitable, he may not be suitable in other respects, but by presenting only one applicant to the Board, the TBZ and the AFC will have robbed the Board of the opportunity to examine the other applicants.

In 1981, the Board of Directors of the Tobacco Board of Zambia resolved to allocate its farms to sitting tenants, and one of these tenants was given three farms, contrary to the policy of the Agricultural Lands Board regarding land accumulation. In view of the resolution of the TBZ Board of Directors, the Agricultural Lands Board felt it had to consent.[34] Thereupon the Agricultural Lands Board took the view that the Tobacco Board of Zambia should be advised to recommend more than one application on each farm to be considered by it so that it does not appear as if it is a mere rubber stamp of the Tobacco Board. At its meeting held on the 3rd of December, 1981, the Agricultural Lands Board

decided to introduce the rule that the Agricultural Finance Company and the Tobacco Board of Zambia should submit at least three applicants for the Agricultural Lands Board's consideration. The General Manager for the Agricultural Finance Company objected saying that the Agricultural Lands Board had no power to direct the operations of other Boards. He explained that it was part of his task to minimise the operational costs of his company such as by submitting one competent applicant rather than the lot.[35] The Agricultural Lands Board, nonetheless, resolved that the two institutions should submit at least three applicants. The Board's decision would be meaningful if, to all advertisements of farms, there were at least three applications, but not otherwise. Indeed, as the AFC representative pointed out in February 1985, it was not always possible to submit the required number of applicants because there were some areas which did not attract many people even after advertising the availability of farms.[36] The Board then directed the Agricultural Finance Company in the future to send minutes of its Farms Committee meetings to the Board. The only problem with this procedure is that while the Board may, from the minutes, learn the qualities of the other applicants who were turned down, only the applicant chosen by the AFC will have been called for the interview, and if the Board is not satisfied with this particular applicant, the farm would have to be re-advertised. If the Board Meetings were more regular, the Board could deal with all these applications itself, knowing, fully well, that no injustice will be caused to the AFC as it is always represented either by its General Manager or the Deputy.

Owing to the infrequency of the Board's meetings, however, the submission by the AFC of three applicants, where practicable, and if not, the single or both applicants together with the minutes of the meeting at which the applications were considered will have to suffice.

The Agricultural Lands Act prescribes the criteria to be taken into account when considering applications for undeveloped land or consent to assign scheduled land. The rationale for these criteria is to ensure that scheduled farms are not given to individuals who are incapable of either developing them or maintaining their production levels on account of age, impecuniousness, ignorance of proper farming methods, or speculation. These criteria have been reproduced in Chapter One and need only be repeated here by way of summary. The Board must take into account any general policy directive made by the Minister; the age of the applicant or proposed assignee; the character of the applicant or proposed assignee; whether he is willing to affirm that he will personally occupy the holding; whether he has the necessary capital; whether he possesses the necessary qualifications; and any other facts which, in the opinion of the Board, are relevant to the individual application or to the holding.[37] In the case of companies, the company must undertake that it will occupy the farm through the agency of a manager who should himself reside on the farm. Evidence of sufficient capital is also required. In order to acquaint applicants with the above requirements gazette notices of meetings of the Board inform applicants that they should be able to show (i) sound financial standing with documentary proof; (ii) two years of farming

experience or employment as farm manager, with relevant references; and (iii) possession of the whole range of implements. It is also indicated expressly that "application forms which do not contain information relating to the above three conditions will not be accepted".[38] In practice, however, serious problems have arisen with regard to the application of the above criteria, and discrepancies do occur from time to time. Their application is also made difficult by various factors including the demand for farms, and the overall economic situation in the country. For the above reasons, the Board has sometimes vacillated. To illustrate the problems of the Board it is necessary to examine the application of these criteria, over the years, through an examination of the numerous instances which have come before the Board.

(a) Age and Character of Applicant

Age and character have not featured prominently in the cases that have come before the Board. In only one case has age been considered, and on this occasion, as an advantage. In this case, one of the applicants was close to retiring age, and among the reasons why the Board chose him in preference to the other three applicants for the same farm was that "he was the most aged of them all".[39] In no other case has age ever been relevant. Obviously, age must be crucial to farming. Farm management requires a degree of maturity. The rigorous application of the requirement of experience would eliminate all young persons, but it would not, however, eliminate the most elderly, who may have the

experience. The separate existence of age as a criterion is necessary. Similarly, little can be said about character. Presumably, an applicant who has been in the habit of abandoning land, or committing crimes, would be excluded from serious consideration. But broadly speaking, character might include one's mental condition, so that persons of proven unsound mind can be excluded. If they are not excluded under character however, they may still be excluded under "any other facts".

(b) Affirmation of Personal Occupation

The affirmation of personal occupation should give the Board advance knowledge as to whether the applicant will be able to comply with section 21 which requires him to "beneficially occupy" the holding which, by definition, includes personal residence or, in the case of a company, the residence of a manager on behalf of the company.

The requirement of personal residence has never been taken seriously by the Board. The rationale for its inclusion was that the colonial government depended on settler immigration to develop farming, and personal occupation was very important to ensure the arrival of more settlers. The larger the number of settlers, the greater the control of the settler community over agricultural land and, consequently, the greater their political control. Since independence, this requirement has largely been ignored. Under the Act, only companies may employ a manager. There is no such provision for individual farmers. The normal practice, however, has been that individuals who

lack experience or farming qualifications have been permitted to employ managers to run their farms, and there really seems to be no reason to preclude people from employing the services of more experienced and better qualified people to run farms in their place.

The proposed manager must appear together with the proposed assignee so that the manager can be examined as to his experience in farming and the plans he intends to implement for the farm. It is not sufficient, however, to employ someone as a farm manager if he will be in full-time employment and will only be able to visit the farm on week-ends, even if he may, otherwise, qualify.[40] But the Board has not been consistent in the treatment of applicants who fail to bring the farm managers to be interviewed or those whose managers do not satisfy the Board as to their qualifications.

In one 1979 application the proposed assignees were involved in the transport business and had no farming experience. They did, however, promise, that if they purchased the farm they would employ a farm manager who, at the time, was a teacher of agricultural science in the Ministry of Education. The manager did not attend the interview to be examined as to his capacity to manage the farm of the size to be assigned to the two brothers. The Board, nevertheless, had no difficulty in giving its consent, albeit, on the condition that they employ a farm manager.[41] In one 1985 application, the proposed manager attended. He purported to have graduated from the Natural Resources Development College (NRDC) and worked with the Ministry of Agriculture and Water Development in the

Department of Veterinary and Tsetse Control, but he could produce no documentary proof of his academic qualifications relevant to farming and was unable to satisfy the Board regarding his proposed use of the farm for grazing. In spite of the Board acknowledging its dissatisfaction with the proposed manager, it still consented to the application and imposed no condition to the effect that another manager should be engaged.[42] But in 1982, an undertaking by an inexperienced applicant that he would employ a suitable manager to run the farm was not taken seriously.[43] The application was rejected in spite of the fact that none of the other persons applying attended. Fresh notices to attend were sent and again only one turned up and he was allocated the farm by default.

(c) Financial Standing

> "Though agriculture is both an art and a way of life, it yet remains a business and like other businesses cannot be carried on, much less expanded, unless funds are available for the maintenance, replacement and improvement of its capital equipment and for the working expenses of its production."[44]

Although the above quotation is more relevant to problems of securing agricultural credit, it is also very important to the Agricultural Lands Board which is duty bound to ensure that land is given only to those who have the capital or assets to develop it. The problems relating to the provision of agricultural credit are discussed elsewhere, here attention is focussed on capital as a pre-requisite to the acquisition of land. The colonial government had placed a lot of emphasis on capital investment and this legacy has

remained an important one, but, unlike the colonial government which was very specific in terms of how much was required, the post-independence government has not placed any specific figure of capital or equipment. Perhaps this default is an advantage which permits the Board a certain degree of flexibility to allow for differences in farm size, proposed farm use, and in general, the availability of credit at a given time in the country. It has also raised problems, however, such as how much is "necessary" under the Act; what proof is required as evidence of financial standing; whether mere expectation of credit being made available from a financial institution is sufficient; and foremost, whether absence of "necessary" capital is totally fatal to an application or whether adequacy of capital must be linked to the relative experience of the applicant or proposed assignee. A highly experienced farmer may achieve more, with less money than an inexperienced farmer.

Where an applicant or proposed assignee has adequate money saved up for purchasing the unexhausted improvements on the land or equipment for farm development, the problem does not arise. But, in reality, few such applicants come before the Board. The majority are dependent on some financial institution or other for a loan, and since the provision of loans is not synchronised with the meetings of the Board, the Board has to make a decision as regards finance on the basis of documents from financial institutions which appear to show that there is a strong probability that the applicant's loan application will be approved. In the early seventies, the Board appeared to be very flexible and in many cases, a mere expression of

intention to apply for a loan from the Agricultural Finance Company, even after the period within which applications for loans were to be received had expired, was sufficient.[45] In most cases, however, some documentary proof had to be produced and by the late seventies a mere expression of intention to apply to a financial institution for a loan was insufficient.

Nevertheless, reliance on documents is also fraught with serious problems. A certified bank statement is self-explanatory, but letters purporting to come from credit managers of financial institutions may be forgeries. At a meeting of the Board held in 1978, the Chairman noted that a lot of people had come before the Board with claims that they would get financial assistance from the Agricultural Finance Company and in most cases ambiguous letters had been produced. The general manager of the Agricultural Finance Company, who was in attendance, asked the Board not to accept any letter promising financial assistance from his company unless it was written and signed by him, personally.[46] But again in the early eighties, the requirement of financial standing was in some cases seemingly relaxed, so much so that in one case in which the proposed assignee told the Board that he relied on a loan from a financial institution in the absence of which he was prepared to sell some of his stock to raise the money, the Board consented to the farm being assigned to him.[47] And in one, rather odd case, in spite of the proposed assignee having insufficient experience and insufficient capital, the Board is said to have approved solely on the ground that it was impressed by the proposed assignee's determination to go

into farming.[48] In terms of capital, therefore, the general principles are that (1) where the applicant or proposed assignee does not have sufficient funds at his disposal, a promissory letter from a financial institution will suffice; (2) in the absence of such a letter, the availability of assets, such as stock, which he can convert into cash, is adequate; (3) if he has sufficient experience, even though his financial standing is low, the Board may approve. Outside the above three principles, there is little likelihood that the Board will approve an application to assign the farm to a proposed assignee.

(d) Qualifications or Experience

As in the case of capital, there are no hard and fast rules regarding what qualifications are necessary. A diploma from any of the farming institutions has been held to be sufficient. In the absence of such or similar qualification, experience has been substituted. In the seventies, the Board appears to have strictly applied the requirement of experience even to the extent where, in one case, in spite of the applicant undertaking to employ a manager, the application was refused. The nature of the experience required has been related to commercial farming. The Board recognises, however, that insistence on experience acquired on a commercial farm would mean the permanent entrenchment of commercial farmers and the prevention of semi-commercial farmers progressing into fully-fledged commercial farmers. As a result, experience gathered on traditional land in the Reserves and Trust Land has been

accepted. However, there must be evidence to show that his production level indicates that he is capable of handling a large farm. In one case an applicant was turned down on the basis that, inter alia, he had no commercial experience, but the Minister reversed this decision of the Board on the grounds that the applicant showed enterprise in developing his customary land from which he raised a substantial sum of money and stock.[49] Since then the Board has taken the performance of an applicant on customary land into account in determining whether the applicant can develop a commercial farm to a satisfactory extent.

In a recent case, the applicant, even though lacking academic qualifications, showed he had some practical knowledge of farming, having produced two hundred bags of maize and five of sunflower seed on customary land.[50] Experience can off-set financial deficiency. In one 1981 application the Board decided that they would give an impecunious applicant a chance on the grounds that he had experience in farming.[51] But once the applicant or his proposed manager proves that he has adequate experience, then it is, apparently, irrelevant where it was gained. This appears to be a serious oversight because farming in one geographic and climatic region may be different from farming in another, for instance the tropics. In one case the proposed manager had twenty-three years of experience acquired in Sri Lanka and this factor greatly impressed the Board.[52] It never occurred to any member of the Board to compare farming in Sri Lanka with that in Zambia so as to show the relevance of the experience gained in that country.

In some instances where substantial capital will be

required to put the farm under production and the proposed assignee has proof of the necessary capital, the Board may overlook the need for farming experience. In one such case the Board was aware that the proposed assignee had no adequate experience, but the Board consented to the farm being assigned to him because he was "prepared to sink his own capital to develop the farm".[53] What the Board meant was that the proposed assignee was taking a risk with his finances and that would, presumably, cause him to apply reasonable standards of cultivation. In this particular case the decision of the Board was not unreasonable because the applicant had agreed to remain on the farm and help the assignee to develop it.

In general, therefore, qualifications or, in their place, farming experience have been a very important factor in securing consent. An applicant who has no experience is unlikely to secure a farm from the Board unless he can engage a manager whose qualifications the Board is satisfied with. Experience is also related to the farm size, hence, although, generally, experience gained on traditional land may be taken into account, it may not be adequate for the proper management of a large farm running into hundreds of acres.

(e) Other Facts

The Board may take into account "any other facts which in the opinion of the Board, are relevant to the individual application or to the holding".[54] The Board is permitted under this head to take into account such matters as the

status of the proposed assignee - whether he is not a citizen but a resident or otherwise. In September 1973, the Board entertained the view that applications by expatriates on contract must be cautiously considered, and decided that among the factors to be considered before the Board approved the proposed assignee were (a) whether the applicant had a valid resident's permit and farming experience, and (b) whether he was bringing into the country sufficient capital of his own.[55] By 1984, however, the Board conceded that there was a popular feeling among politicians that more foreigners got farms as opposed to indigenous Zambians, but it further noted that "foreigners are more ready to go into farming and (thus) feed the nation than indigenous Zambians".[56] The question of the ownership of land by non-Zambians is one matter over which there was at the time no decided policy. In an attempt to give the Board some direction the Minister said:

> "I wish it would be proper here to state that land can be owned by people without permanent residential status. Each case, of course, has got to be dealt with purely and simply on its own merit."[57]

The Minister, however, confessed that it was difficult to give an overall ruling on such matters.[58]

Another factor which has come up before the Board is the question of mortgages. Representatives of financial institutions have pleaded with the Board to block any attempts by their mortgagors to transfer or assign their interests to others - who may not, in the opinion of the Bank, be suitable. At a meeting of the Agricultural Lands Board of 10 February 1983, the General Manager of the Agricultural Finance Company appealed to the Board to assist

the company in recovering outstanding loans by blocking the assignment of farms in cases where the vendors owe money to organisations such as the AFC. He explained that some loans were given on no security at all due to political pressure. The Chairman of the Board, however, replied that there was little the Board could do to assist the AFC in such cases because its criteria centred on the quality of the proposed assignee and not that of the applicant. It is submitted that this is one instance in which the Board is not as helpless as the chairman would seem to imply because under "any other facts relevant to the individual applicant or to the holding", the Board is empowered to take into account the circumstances surrounding the particular farm.

In one case the Board did, in fact, consent to a farm being assigned to a person who owed the Agricultural Finance Company a sum in excess of one million kwacha despite the objection from the Manager of the AFC that the proposed assignee was not a good farmer having been perpetually in arrears with his payments. The Board, however, considered that the grant of the farm to the proposed assignee would afford him the means with which to repay the loan.[59] Ordinarily, therefore, an outstanding loan to the AFC is no bar to an assignment where the loanee's assets exceed his liabilities, but in a subsequent case the Board denied consent on the ground that the farm was too heavily mortgaged to the AFC and, in their view, it was "unfair to transfer such a burden to the proposed assignee".[60] Admittedly, the financial position of either the applicant or the proposed assignee is very crucial to lending institutions such as the AFC. Where it has lent money on a

mortgage its position might be secure because it can sell the farm and recover its money, irrespective of whether the proposed assignee is impecunious. The difficulty arises where the loan was inadequately secured or not at all. In such cases it is in the interests of the AFC that its debtor does not dispose of his farm and disappear. Hence its objections to the Board consenting to the disposal of farms by such applicants. This is an important aspect which the Board should take into account, as it is empowered to do.

The other problem which does not seem to have been settled by the Board is whether or not it should consent to an application to assign a farm on which a caveat has been registered. In one application which came before the Board in 1982, the Board resolved that the "caveat registered on the property cannot hinder the Board from approving the application"[61] and accordingly approved. In a subsequent case, however, the Board declined. The facts of the case were that the proposed assignee, according to his testimony, had bought the farm six years previously and had since been farming on the land. He explained that the original owner, the applicant did not operate on the farm. He appealed to the Board for the removal of the caveat registered on the property by Zambia-Tanzania Railways for undisclosed reasons. The Board, after due consideration, felt that the fact that a caveat had been registered was an indication of the existence of an interest in the property and decided to withhold consent until such time as an investigation could be conducted and the nature of the interest protected by the caveat discovered.[62] It is submitted that the decision in the latter case is proper because as long as a caveat

remains in force the registrar is precluded from making any entry in the Register having the effect of "charging or transferring or otherwise affecting the estate or interest protected by such caveat".[63]

(f) Land Accumulation

Section 18(2) states:

> "In allocating any holding the Board shall, all other things being equal, give preference to an applicant who is not already the owner of agricultural land."

This section permits the Board to take steps to prevent land falling into the hands of a few individuals who are financially well-off. It is also possible that even in the absence of this section, land accumulation could have been prevented under "any other facts". Nevertheless, an express provision of this nature gives the Board greater confidence in the discharge of its responsibilities under the Act. Nonetheless, in inserting this provision, the colonial government envisaged a very restricted scope within which the egalitarian policy of equal access to land could play a significant role. The provision does not go far enough because: (1) it must be applied only where there is competition between two or more people for a given farm, and (2) the competitors for the farm must be of equal standing. It is in very rare circumstances where a number of competitors will be equal to the degree envisaged by the phrase "all other things being equal". The weakness of this provision led to the Board, prior to 1973, to adopt a very flexible approach regarding land accumulation.[64]

In three cases that came before the Board in 1973 the Agricultural Lands Board approved the applications for consent to assign farms to three proposed assignees, all of whom already owned scheduled leasehold farms. Reviewing one of these cases, the Minister said:

> "This will mean that Mr (X) will be entitled to two viable units which according to present policy is contrary to what is expected of us in the assignment of land portions. Why don't we let another capable farmer take over this unit if possible?"[65]

The Minister's reference to "present policy" which he and the Board were expected to carry out can only mean section 18(2) which, as already pointed out, is of little assistance to the Board. It is clear, however, from the record that the competitors for the three farms were not of equal standing. Consequently, the Minister's decision was, in fact, an extension of the meaning of section 18(2), and can only be justified as a policy direction. In view of the ruling in the three cases, the Board was forced to create exceptions in cases which merited its sympathy. In one application where the applicant wished to acquire a farm adjacent to his present holding with a view to amalgamating the two, the Board approved saying:

> "It was the Board's opinion that although it is present policy not to allow an individual to own more than one farm it felt that the application merited sympathy as a) the farm being acquired was generally poor and would require a lot of capital to make a viable unit of its own and b) the applicant was to sink a lot of capital into the new farm."[66]

This exception was, however, not applied consistently, particularly between 1977 and 1979. In 1977 the Board rejected one application submitted by an applicant whose farm was adjacent to the farm the subject of the

application. According to the applicant the farm could not be used as a viable unit on its own, and his intention was to use it as a grazing extension of his present farm. The Board "unanimously rejected" the application on the ground that his present farm was very good.[67] By contrast, in another application that was made two years later, the Board approved "though from records it was seemingly clear that (X) had enough land to develop".[68] On the facts, there was nothing to distinguish the two cases and the Board made no attempt to refer to its previous decision and give reasons for not following it. Such inconsistency is also discernible in the decisions made by the Board in 1982. In an application by Dar Farms and Transport Ltd, a limited company engaged in ranching and growing crops, the company already owned three farms and, for that reason, the Board refused arguing that it was its duty to ensure that no individuals or companies acquired more farms than others. The Board concluded "since the company was not selling any of its other farms, consent would not be granted".[69]

The strict application of the rule against land accumulation may pose a serious constraint on companies that wish to invest in farming. While the restriction of one farm per person is perhaps meaningful as regards private individuals, it is not appropriate for a company with several shareholders, who, if they were to apply for farms individually would, on satisfying the required criteria, be each entitled to a farm. As a company, however, the Board will on the basis of the case of Dar Farms Ltd, prevent it from owning more farms even if it has the resources to develop them. Farming is, therefore, less attractive to

companies than other business, an outcome which could hardly have been contemplated by the government. At a time when the government is struggling to encourage agriculture, this restriction on companies appears to be a retrogressive step. A simple solution would, therefore, be to permit a company to have as many farms as the number of its shareholders who would individually qualify for a farm.

4. Enforcement of Compliance with the Conditions

The control of scheduled farms is not limited to the exercise of consent to land transfers by the Board. The Agricultural Lands Act requires the tenant to occupy the land and satisfy the required development standards,[70] and the Agricultural Lands Board not only to monitor the use being made of agricultural land but also to enforce development requirements. This the Board does through the Office of the Commissioner of Lands. However, the problem of farm inspection has plagued the Office of the Commissioner of Lands since the establishment of the Board.

Since 1977, the Board has repeatedly expressed dissatisfaction at the failure of the Lands Department to carry out systematic inspections of all scheduled farms. In 1977, one of the members of the Board reported to the Board that many farms, especially in Chisamba (Central Province), were either not being utilised by their owners, or had been allowed by the owners to be occupied by villagers who had no title to them.[71] At the time, the explanation of the

Commissioner of Lands was that his department was facing dire transport problems which prevented it from carrying out tours of farms. Further reports of squatters on scheduled farms were made by members of the Board in 1979, with the addition that villagers were indiscriminately cutting wood for charcoal.[72] Such complaints against inactivity by the Office of the Commissioner of Lands were repeated in the same year,[73] and subsequently in the following year.[74] The Board noted that some farms were out of production while others were completely abandoned. On each of these occasions, the Commissioner of Lands pointed out that the problem was that of transport.

Some structural changes have, however, been cited as being, in part, responsible. During the colonial era, there was a category of land officers designated as "farm rangers" who resided in various districts for purposes of monitoring farm development within their respective local districts.[75] After independence, these officers rushed to the capital in the expectation of better opportunities. Although the Lands Department has three provincial offices - in the Southern, Eastern and Copperbelt Provinces, it has no offices in the remaining six provinces. It was explained, moreover, that even in the provinces, where these offices exist, vehicles for farm inspection have broken down and not been repaired for lack of spare parts.[76] Farm inspections in Mkushi area (Central Province) where farmers had applied for extension of their leases from thirty years to ninety-nine years, were carried out because the farmers themselves provided transport for land officers from Lusaka to Mkushi.

Faced with transport problems, the Lands Department has

resorted to asking those who come for inquiries about land to carry out a search and report to the department if there is any farm which, to their knowledge, has been abandoned, or is not being utilised.[77] By such means, the Commissioner of Lands is made aware of the location of undeveloped land. The only problem with this means of information is that if the person who has "discovered" it is unsuitable under the various criteria, then the Board is placed in the embarrassing position of having to refuse its consent to the alienation of the farm to the individual even if he has been put to such trouble. The Lands Department has sought to take advantage of the government's decentralisation policy by requesting local authorities to co-operate with the department by monitoring the progress of farms within their respective districts, but the response from local authorities has not been encouraging.[78]

5. Evaluation

The reasons for passing the Agricultural Lands Act have been discussed in Chapter One. The impact of the Act after twenty-five years is decidedly small. This arises from the relatively small number of farms which fall under the Act. The exercise of control even for scheduled land is fraught with various difficulties. The Agricultural Lands Act is a colonial legacy based on a different mode of agricultural production. It seeks to base agriculture on those who have financial resources and a decided element of experience of

commercial farming. Only in those cases where there are more than one applicant who are of equal standing can the Board give preference to the competitor who is not already the holder of agricultural land. Agricultural development was to be attained by a small elite of commercial farmers. With the coming of independence, and a change in emphasis from production by a small elite class to the masses, the Act is inappropriate.

In order to permit access to scheduled land to Zambians whose qualifications and financial position is not sound, the Board has been forced to gloss over some of the provisions of the Act - to the extent of permitting the employment of farm managers, when the Act only permits this in respect of companies. Where, as in this case, the provisions of an Act are not in keeping with existing values, there are bound to be inconsistencies in its application. The Board has, in the application of the Act, shown strictness in some cases and flexibility in others. Perhaps this is inevitable for a body such as the Agricultural Lands Board, and indeed it may be argued that the seriousness with which the Board should take the various considerations must depend on such factors as the demand for farm land and the economic and political environment at any given time. In the mid-1970s political pressure was brought to bear on the Agricultural Lands Board to give farms to those Zambians who did not have any, hence the relaxation of conditions - for instance the acceptance of experience acquired on a farm in Reserves or Trustland (tribal lands) as adequate "qualifications". But towards the close of the seventies the government was more interested in production

figures rather than equal opportunity - hence the greater emphasis on experience and capital.

It is also important to add that the economic situation prevailing in the country plays an important role on whether or not land is being properly utilised. The availability of agricultural credit, the cost of agricultural inputs, and the producer prices offered to farmers will determine not only whether a farmer grows crops or goes into ranching, but also the degree or extent to which he will develop his farm. Hence farm inspections on their own accompanied by the threat of deprivation of the farm may not necessarily lead to farm development, unless the farmer was not interested in farming in the first place.

Nevertheless, if agricultural development is to be achieved, a rational approach to land allocation must be worked out. Scheduled land is not the only agricultural land. It is not socially unfair, therefore, to exclude unsuitable or incompetent people from them. A realistic approach would be to encourage applicants who are suitable, in terms of capital and experience, to have these farms irrespective of whether they already own a farm. Companies in this respect need special consideration to free them from the rule against land accumulation. Constant monitoring of farms is necessary to ensure that those without the means who presumably wanted a farm as future security or merely for housing themselves can be forced out and encouraged to try elsewhere, for instance on tribal land. Farm inspections have been hampered by the absence of transport facilities. The solution would appear to be the residence in various districts of land officers through the

decentralisation of the Lands Department. This may permit the Agricultural Lands Board, which meets only quarterly, to monitor farm development in various districts.

C. COMPULSORY ACQUISITION AND LAND DEVELOPMENT

1. Compulsory Acquisition Prior to 1970

While scheduled agricultural land could be controlled by the Agricultural Lands Board government was powerless to control agricultural land under freehold tenure, prior to 1975. In the meantime the need for such control had become more urgent, as numerous farms had been either vacated or left undeveloped by European landholders who had opted to leave the country following independence. What was needed was new legislation that would enable the government to take over vacant and undeveloped land for alienation to the public.

Before the enactment of the Lands Acquisition Act, 1970[79] the government's power to acquire land compulsorily was very limited. Section 18 of the constitution[80] provided

> "(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired except where the following conditions are satisfied, that is to say -
> a) the taking of possession or acquisition is necessary or expedient -

i) in the interests of defence, public safety, public order, public morality, public health, town and country planning or land settlement;
ii) in order to secure the development or utilization of that, or other property for a purpose beneficial to the community; and

b) provision is made by a law applicable to that taking of possession or acquisition -
i) for the prompt payment of adequate compensation; and
ii) securing to any person having an interest in or right over the property a right of access to a court or other authority for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation."

Subsection (2) provided, further, that if the above conditions were satisfied, any person who was entitled to compensation under it was not to be prevented from remitting the whole compensation within reasonable time of receiving it to any country of his choice outside Zambia. As part of Chapter III of the constitution which dealt with the protection of fundamental rights and freedoms, section 18 could not be amended without a referendum being held.[81] Section 18 was seen as yet another obstacle which the British had introduced primarily to protect the interests of the white minority under a black government.[82] As James puts it "obviously these entrenched provisions were an attempt by the outgoing British government to secure the continued exploitation of independent Zambia by the settlers and to protect their rights to property although many of

them had already left the country permanently".[83] The President was, therefore, expressing the general opinion when in 1969 he told the General Council of UNIP: "As humanists we are dedicated to the upholding of the protection of fundamental rights and the freedom of the individual. However, property rights must be subject to the common good and to the general interests of the community. The existing section 18 of the constitution must be examined and replaced by more realistic provisions".[84]

Like the constitution, the colonial Public Lands Acquisition Ordinance (which at independence became an Act) was too restrictive with regard to the purposes for which compulsory acquisition could be effected. This ordinance contained the limitation that land could only be acquired for "public purposes" as statutorily defined.[85] The government was, therefore, handicapped both under the constitution whose conditions did not include alienatio to other private farmers and the ordinance which also failed to permit acquisition of land which was either vacant or undeveloped.

Government's first step was to mount a campaign and hold a referendum which would have the effect of amending section 18 as well as section 72 itself under which fundamental freedoms were entrenched so that in future further amendments could be introduced without further referenda. In his campaign, the then Minister for Information, Broadcasting and Tourism, Mr Sikota Wina explained:

> "Armed by Parliament with powers to acquire land, Government will be in a position to take possession of vast amounts of good agricultural land which is now neither worked nor occupied by the registered owners."[86]

He stated that in Southern and Central Provinces there were 400,000 acres of such land. In the Chisamba area there were 14 such farms, Mazabuka had four, Mwomboshi, two. Some unused farms were also to be found in the Eastern, Northern and Western Provinces which, according to him, government could take over.[87]

On the 17th of June 1969 the government secured the desired majority vote in the referendum and subsequently introduced five amendments to the constitution. Section 72 was amended by the deletion of subsection 3, thereby removing the requirement of referendum.[88] By another amendment, the orginal section 18 was repealed and replaced by a new section 18.[89] This section enabled government to acquire land compulsorily under a law relating to, inter alia "abandoned, unoccupied, unutilised or undeveloped land" and a law relating to "absent or non-resident owners" as defined in such law.[90] Following the constitutional amendments, the Lands Acquisition Act[91] was passed and became law on the 10th of February, 1970.[92]

2. The Lands Acquisition Act, 1970

(a) Procedure for Acquisition

Section 3 of the Lands Acquisition Act states that the President may "whenever he is of the opinion that it is desirable or expedient in the interests of the Republic so to do compulsorily acquire any property of any description".

The expression "in the opinion" of the President would seem to confer a discretionary power in the President so that his determination whether or not the acquisition is in the interests of the Republic cannot be contested in a law court. This was the view taken by the Supreme Court of Zambia in the case of Nkumbula v. The Attorney-General for Zambia.[93] In this case, deliverying judgement, Baron, J.P., said:

> "the words 'in the opinion of the President' clearly make the matter one for the subjective decision of the President and it has never been doubted that a decision made under a power expressed in such terms cannot be challenged unless it can be shown that the person vested with the power acted in bad faith or from improper motives or extraneous considerations or under a view of the facts or the law which could not reasonably be entertained."[94]

Although the above reasoning would appear to have settled the issue, some doubt has been expressed by the Commissioner of Lands regarding the extent of the discretionary power conferred on the President under section 3. In a minute to the Permanent Secretary the Commissioner of Lands said:

> "In my view it is not proper to use section 3 of the Lands Acquisition Act when you are not of the opinion it is desirable so to do and when your real and dominant intention is merely to alienate land to an individual. And any person with a locus standi in matters of this nature and who would show that the real and dominant purpose of acquiring the property is merely to facilitate alienation of property to an individual for private purposes and no more, is likely to succeed in court in invalidating the Presidential declaration of opinion under section 3 of the Lands Acquisition Act CAP 296."[95]

In other words, the relevant section has failed to express fully the intention of the government as expressed by the

President in his address to the National Council and the Minister to the National Assembly when introducing the Bill. With the greatest respect to the Commissioner of Lands his views cannot be supported. He seems to have equated the expression "in the interest of the Republic" with the expression "public purposes", so that the land acquired must be used for specific government projects. Further, one might well argue that it is "in the interest(s) of the Republic" that farms which are not productive must be acquired for purposes of alienation to members of the public who wish to develop them for the common good. As it happens, in spite of the views of the Commissioner of Lands, government has compulsorily acquired farms which have been turned over to individuals to develop.

Once the President has resolved that it is "desirable or expedient in the interests of the Republic" to acquire a given property, the Minister serves a notice referred to as a "Notice of Intention to Acquire Property" to the persons interested in such property.[96] This notice invites interested persons to submit their claim to the Minister within four weeks of the publication of the notice in the Gazette.[97] Section 7 relates to the service of notices. The notice can be served either personally on the interested parties or by leaving it at their last usual place of residence or business. If any of the interested parties is outside the country, or where he or his last usual place of residence or business cannot be traced after a reasonable inquiry, it is sufficient to serve the notice on the occupier of the property and, where there is none, to affix it on some conspicuous part of such property. It is also

provided that every notice should be published in the Gazette "as soon as may be practicable" after service in the manner prescribed regarding the service of notices. So long as the notice has been published in the Gazette, the acquisition of the property is not invalidated on account of any irregularity in the service of the notice to any interested parties or its publication prior to it being served on interested parties.[98]

If the President wishes to take possession of the property, the Minister serves a "Notice to Yield up Possession" on the parties entitled to the property under section 5, within such period, not less than two months from the date of service of the notice, as he may determine.[99] The President may, however, certify that the property in question is urgently required, in which case the party served with the notice has to yield up possession within such shorter period as the President may direct. On the expiration of such period, the President or any person authorised by him may take possession of the property.

Where a notice to acquire property has been published in the Gazette the persons on whom the notice has been served must, "notwithstanding anything to the contrary contained in any other law or in any order of any court otherwise than under such notice, transfer the same to the President".[100] In default of such transfer the Minister may make an application (in the prescribed form) to the Registrar of Lands and Deeds for an entry to be made in the Register recording the compulsory acquisition of the land.[101] The Minister must then execute an affidavit to the effect that the procedure for acquisition was complied with,

whereupon the Registrar, if so satisfied, will then record the compulsory acquisition of the land.[102]

Where a transfer to the President has been registered or the Registrar has made an entry in the register recording the compulsory acquisition "such transfer or entry shall vest the land in question in the President free from all adverse or competing rights, title, trust, charges, claims or demands whatsoever, but subject to any terms and conditions contained in such transfer or entry".[103]

(b) Compensation

Under section 10, where any property is acquired by the President in accordance with the provisions of the Act, the Minister must (out of money provided by Parliamentary vote), pay such compensation in money as may be agreed between the government and the party and, in default of agreement, a sum determined in accordance with provisions in the Act. There is a proviso permitting the President, with the agreement of the party entitled to compensation, to substitute a parcel of State Land of, at least, the same value as the land acquired. No advantage, however, has been taken of this proviso.

The Act also prescribes the principles for assessing compensation.[104] In brief, these principles are that no allowance should be made on account of the acquisition being compulsory; the value of the property is that which it might be expected to realise if sold on the open market; the special suitability or adaptability of the property for any purpose should not be taken into account if such purpose is

one to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser; no allowance should be made on account of improvements effected after the publication of the notice to yield up possession; and no allowance is to be made for any probable enhancement in the future of the value of the land to be acquired.

Compensation is not payable in all cases, however. The Act draws a distinction between land for which compensation is payable and that for which it is not. Section 15(1) states:

> "Notwithstanding anything contained in this Act or any other law, but subject to subsection (2), no compensation shall be payable in respect of undeveloped land or unutilised land."

Under subsection (2), except where the land required is unutilised land to which an "absentee owner"[105] is beneficially entitled, compensation is payable in respect of all the unexhausted improvements.[106] This is one provision which is intended to hit absentee landlords severely. Notwithstanding that an absentee landlord has effected unexhausted improvements on his land, so long as he is not utilising it, no compensation is payable to him. To those who are not absentee owners compensation is payable to the value of the unexhausted improvements.

Of great importance to the owner must be the meaning of the term "unutilised" in relation to land. In so far as it relates to land in a rural area, land is deemed to be unutilised "if, having regard to the character and situation of the land and all other relevant circumstances, the exploitation of the land is not in accordance with good

estate management".[107] This definition would seem to imply that the government has to examine the land in question in terms of actual agricultural potential and compare its use with the use being made of other land in the same location, and also determine whether, given its potential, the land is being used properly. It might be easier to tell, on visiting the farm, whether it is being properly utilised or not, rather than attempt a definition of what amounts to 'good estate management'. If only a small proportion of the land, being ideal for arable farming, is under cultivation while the rest is used for grazing, it would be "unutilised" within subsection 4. It must be conceded, however, that it is a very difficult test to apply and must, therefore, require the services of qualified land use officers.

Compensation is not payable for undeveloped land irrespective of whether the owner is an absentee owner, as defined in the statute, or is resident in the country. As a general principle, land is deemed to be undeveloped if it is "inadequately developed bearing in mind the national need ...".[108] There is no definition of national need, thus, the government has a wide scope within which to determine whether land is developed or undeveloped. Some guidelines are, however, provided. Land does not cease to be undeveloped by reason only, (a) that it has been fenced or hedged; or (b) that it has been cleared, levelled or ploughed; or (c) that it consists of a cleared or partially cleared site of some former development; or (d) that it is being used otherwise than as ancillary to adjacent land which is not undeveloped or unutilised. A proviso, which applies exclusively to land in a rural area, however,

states:

> "Provided that in the case of land in a rural area which is being used for agricultural, pastoral, or mixed agricultural and pastoral purposes, the land shall not be deemed to be undeveloped unless such land has not been used for cultivation or pastorage ... at any time during the period of two years immediately preceding the publication of the notice to yield up possession."[109]

The effect of this proviso is to make rural agricultural land which has been cleared, or ploughed attract compensation unless it has not been utilised for a period of two years immediately preceding the notice to yield up possession. It must be borne in mind, however, that the amplification of the definition of "undeveloped" does not derogate from the generality of the broad definition which involves "national need". The import of these provisions is to give the government limitless power to withhold compensation. It is, obviously, unfair that those who have expended their capital on clearing and fencing land should not be compensated, particularly that government will make a charge for such improvements when it disposes of the land. On the other hand, owners of unutilised land on which there are unexhausted improvements whose definition includes clearing and fencing are entitled to compensation. There appears to be no logical reason to treat the two cases differently.

(c) Settlement of Disputes

The Act provides two different avenues for the settlement of disputes. Disputes are divided into two categories - those which do not involve the quantum of

compensation and those that do. Under section 11 if, within six weeks after the publication in the Gazette of the notice to yield up possession, there remains outstanding any dispute relating to or in connection with the property (other than a dispute as to the amount of compensation), the Minister or any person claiming any interest in the property, may institute proceedings in the court for the determination of such dispute. Such a dispute might relate to the acquisition procedure, in particular, to whether compensation is payable or not. In view of the wide scope of interpretation of expressions such as "unutilised" and "undeveloped" the likelihood of such disputes arising is very minimal. There is provision, however, that the existence of any dispute does not affect the right of the President to take possession of the property, provided that where the dispute relates to whether compensation is payable or not, possession may be taken only after the Minister has paid into court an amount he regards as "just compensation".[110]

Any dispute pertaining to the amount of compensation is expressly outside the jurisdiction of the courts. It must be referred either by the Minister or the party disputing the sum, to the National Assembly whose determination is final. Similarly, such a dispute does not prevent the President from taking possession of the property provided the Minister pays into court compensation deemed to be just.

The above brief description comprises the framework of the legislation for compulsory acquisition of land meant to enable the government to acquire all undeveloped and

unutilised land for re-alienation to persons who will develop it.

(d) Implementation

In spite of the publicity attending the need for a new legislation on compulsory acquisition, the Lands Acquisition Act has proved to be a cumbersome and difficult one to implement. In terms of achieving its original object, the Act has been a failure. [111] The problems which have been encountered are divisible into legal constraints and practical constraints.

(i) Legal constraints

The problem often facing the Lands Department arising from the inadequacy of the law relates to marking off. Section 8 of the Lands Acquisition Act allows the government to acquire a portion of land as opposed to the entire land owned by the individual. Section 8 makes no provision for the legal means to carry out this type of acquisition. When government wishes to acquire compulsorily part of an individual's land, there is no legal machinery by which the President can become the registered proprietor of the required piece. For the President to obtain title to only a portion of the property, it is necessary to mark off the required portion from the rest of the land. There is no provision, however, compelling the registered proprietor to surrender his title documents for purposes of marking off. This inadequacy in the law has frustrated attempts by the government to acquire a part only of the land, particularly

where such part would not attract compensation.

In practice, partial acquisition has had to be abandoned in some cases. This has been in instances where an individual owns a large farm, with a building erected in one corner of the farm. The remainder of the farm would be unutilised and undeveloped, thus falling under the category of land for which compensation would not be payable. When no funds have been available to enable the government to acquire the whole property and pay compensation in respect of the buildings in one corner of the farm, acquisition has had to be abandoned. There is, therefore, an urgent need to amend the Lands Acquisition Act to facilitate the acquisition of portions by the government.

Moreover, there is an apparent conflict between sections 2 and 20. Section 2 defines land as including "any interest in or right over land but shall not include a mortgage or other charge", but under section 20 where a transfer to the President is registered under section 19 such transfer or entry will vest the land in the President free from adverse or competing rights or charges. The Registrar of Lands and Deeds is, therefore, reluctant to register the President as the owner of land which has an outstanding mortgage on it.[112] Registration would have the effect of defeating the mortgage and leave the mortgagee unsecured and thus look only to the mortgagor for the repayment of the loan or sue the mortgagor on the personal covenant to repay. Hence the reluctance on the part of the Registrar to register the President as owner. One significant case where the Registrar has declined is that of the Mumbwa Concession area, discussed by Mvunga.[113]

Concessionaires in this area, who had since left the country had obtained mortgages from various money lending institutions in the hope of exploiting minerals. Mineral prospects, however, revealed no minerals and subsequently the owners abandoned the area. When the same land became subject to compulsory acquisition, the Lands Department was constrained by the outstanding mortgages on it.

(ii) Practical constraints

The practical constraints which have inhibited the application of the Lands Acquisition Act are:

i) the multiplicity of land administration agencies;
ii) the absence of or shortage of skilled manpower;
iii) procedural delays; and
iv) lack of funds for compensation.

1) Multiplicity of land adminitration agencies

The Lands Department is forced to work in conjunction with several other government departments to effect compulsory acquisition. It depends on the co-operation of the Department of Agriculture in the Ministry of Agriculture and Water Development to assess the state of agricultural land. Land use officers must, therefore, be available for the use of the Lands Department. These officers cannot be compelled to help because they are outside the administrative control of the Lands Department.

The Lands Department also depends on the services of valuers in the Department of Valuation in the Ministry of Provincial and Local Government. Their services are invaluable, because the amount of compensation depends on

their valuation.[114] The Valuation Department, for its part, is facing acute shortage of skilled staff. As a result these are not always available to the Lands Department to determine the value of properties to be acquired. This also results in delays in the compulsory acquisition procedure.[115]

The Lands Department also depends on the officers of the Minister of Lands and Natural Resources to issue notices of acquisitions to the persons interested in the property inviting them to submit their claims to the Minister within four weeks of publication in the Gazette.[116] In some cases the claims of interested parties sent to the Minister's Office have not been promptly forwarded to the Lands Department. In such instances the Lands Department may proceed to acquire under the impression that all interested persons have had notices but have chosen not to respond when in fact their claims have been held up by red tape. When it later transpires that the responses of the interested parties have not been taken into account, the process of acquisition must be recommenced. To take an example, when the Lands Department was acquiring land for a Site and Service Scheme financed by the World Bank Housing Project in Lusaka, one of the interested parties who had submitted his claim to the Minister's Office discovered that in fact his claim was never forwarded to the Lands Department. Eventually the claimant raised the issue, the entire exercise had to be recommenced. Amendments to the Act could be made so that interested parties do not have to forward their claims to the Minister, but to the Department of Lands directly. In this way, the possibility of claims being lost

or delayed through red tape could be eliminated.

2) Lack of skilled manpower

The Lands Department has no surveyors attached to it. As a result of this handicap, it sometimes resorts to using its own unskilled staff to do a surveyor's job. The need for skilled manpower was brought to light in January 1976. On the 30th June 1975, the President in his "watershed speech" instructed that all undeveloped land in and around cities, and municipal townships should be compulsorily acquired and alienated to people interested in developing the same.[117] In an attempt to implement this directive, the Lands Department sent its field officers to locate all vacant and undeveloped land. What was actually needed was for the surveyors to locate the plots and then clearly mark out the boundaries. The field officers that were sent muddled up the exercise. As they were not certain about the boundaries, they recommended the acquisition of some farms under the mistaken impression that they were undeveloped when, in fact, there were some buildings situated in the corners of the farms. The Assistant Commissioner of Lands was forced to verify each and every report for himself. The problem of lack of skilled staff is compounded by the complex provisions in the Lands Acquisition Act itself whose definitions of "undeveloped" or "unutilised" are not easy to apply in practice. One initial step to minimise the effects arising from the absence of skilled manpower would be to give on-the-job training to land officers. A more helpful suggestion would be to simplify the definitions of "undeveloped" land by imposing a minimum value of

improvements that must be met if the land is to be said to be developed. In this way, with the help of valuation officers, the question of whether compensation should be paid would be easier to determine and the quantum of such compensation easier to assess.

3) Delays

Under the Act, the procedure for acquisition is supposed to be set in motion by the President's decision that "it is desirable or expedient in the interests of the Republic to acquire" any property. The President's decision is communicated to the Lands Department through the Minister of Lands and Natural Resources, and upon such communication, the Department proceeds to acquire the property in question. The common practice, however, is that the decision to acquire property does not emanate from the President but from government ministries and parastatal bodies which might need land for development projects. Such ministries and bodies inform the Commissioner of Lands of their interest in certain property and the use to which they intend to put it. Thereupon the Commissioner of Lands communicates the request to the Minister who, for his part, will seek the Presidential resolution. Invariably, this is the procedure in cases where the government wishes to acquire unutilised or undeveloped land because the President is in no position to know which property is undeveloped or vacant. Because the initiative is from the bottom and not from the top there has been delay in securing the decision of the President.

Delay is also caused by the cumbersome procedure for compulsory acquisition. Under section 5 a "Notice of

Intention" must first be served, and thereafter published in the Gazette "as soon as practicable". Then there is a "Notice to Yield up Possession" which must undergo the same process. It has sometimes happened that as soon as the interested party is served with the notice of intention to acquire, he has proceeded to make improvements which will attract compensation in the hope that government will, being short of money, be deterred. Such a course is possible because under section 12 relating to the assessment of compensation, the rule that the assessing body should not take into account improvements on the property is restricted to those improvements effected after publication in the Gazette of the "Notice to Yield up Possession". Between the service and publications of the two notices there is time for an owner of agricultural land to make a few improvements for which compensation must be paid. It is, of course, possible to combine the two notices required and there is a prescribed form for such a combined notice, but in such cases the President must certify that the land is urgently required and there may be a delay in obtaining such a certificate just as there is, often, a delay in obtaining the Presidential decision.

As, in practice, the President does not initiate the process of acquisition and his role is purely a mechanical one, delay could be eliminated if he could delegate his powers under the Act to the Minister. This is not possible in the present form of the Act as the President's determination is a discretionary one and, at common law, a discretionary power cannot be delegated.[118] A possible solution would be to recast section 3 of the Act and vest

the powers in the Minister, so that he, and the Commissioner of Lands, between them, can compulsorily acquire property without reference to the President.

4) Financial constraints

The Lands Department requires money to pay out as compensation for property acquired. To this end, Parliament allocates funds which go into the Compensation Fund of the Department. This money is required in two specific situations. The first is where there is no dispute as to the amount of compensation in which case the money must be paid to the claimant. The second is when there is a dispute either as to the amount of compensation or whether or not compensation is payable. In such a situation the Minister must pay into court an amount he considers as "just".[119] The government has, from time to time, made allocations for this purpose, but such allocations have, often, been inadequate. This does not, of course, impede the acquisition of undeveloped land which, in any event, is not the subject of compensation, but will impede the acquisition of unutilised land on which there are improvements unless the land is owned by absentee owners. But even where there is a dispute as to whether land is developed, money has to be paid into court, pending the determination of this question by the court.

In the face of financial constraints, the Lands Department has, largely, confined its acquisitions to undeveloped land or unutilised land held by absentee land owners.[120] Where a government ministry or parastatal body has shown interest in a particular property for a given

project, they have been asked to provide the funds with which to compensate the property owners. Presumably the same could be extended to private individuals interested in unutilised land for which compensation is required.

The available figures in the Lands Department have been compiled on the basis of the total number of acquisitions in each province. There is no breakdown showing the distribution of acquired properties over districts and the use to which the properties have been put. In general, however, it may be asserted that acquisition has been concentrated (over properties) in Lusaka Province, followed by the Eastern and the Southern Provinces. Between January 1975 and December 1980 a total of 439 properties were compulsorily acquired, and by far the largest number was in Lusaka Province. In the order of importance the uses to which these properties have been put are residential, industrial and commercial, and agricultural. Properties acquired for agricultural use have, however, been limited to the establishment of settlements under various schemes. Little use seems to have been made of the Act to release land and alienate it to productive farmers. The reason could be the problem of funds to compensate owners of unutilised farms, and the practical difficulties which have faced the Lands Department.

The importance of the Lands Acquisition Act as a means of enabling government to control the use of agricultural land has largely been superseded by the Land (Conversion of Titles) Act, 1975[121] which abolished freeholds, and in their place, introduced a system of statutory leases with development covenants, the non-compliance with which leads

to forfeiture, attached to it.

D. THE LAND TENURE REFORMS OF 1975 AND LAND CONTROL

1. Genesis of Land Tenure Reforms

(a) The Land Commission of 1965

On the 24th of November, 1964 a Cabinet Land Policy Committee was established "to review all aspects of land policy which were inherited on independence and to submit recommendations on a comprehensive Zambian land policy".[122] It was also decided that better results would be achieved in this exercise if this Committee could appoint a commission under an independent chairman to collect data for the use of the Committee. In June 1965, the Land Commission was appointed to collect information on various aspects of land law, in particular land tenure and report to the Cabinet Committee together with recommendations.[123] The Commission was well-briefed regarding government views on land policy that it must be geared towards confining the use of agricultural land to agricultural uses; controlling the quantity of land that may be held by a single person; enforcement of proper land use; and securing, for the benefit of the community, any increments realised through public expenditure.[124]

The Commission submitted its report in 1967. In general terms, the Commission recommended inter alia that

the Orders-in-Council should be revoked and replaced by a Land Administration Act which would regulate the making of original grants of title, and provide for the unification of land administration and an integrated land tenure system; that the law applicable to land held under statutory tenure should be amended, simplified and enacted as part of the legislation of the country rather than the received law; and that a system of registered title should be introduced and made applicable to land held under both statutory tenure and customary land tenure.[125]

Appended to the Report are draft bills to effectuate the Commission's recommendations. These draft bills have been the subject of serious criticism. The proposed legislation is said to be an indication of the failure of the Commission to grapple with the issues involved in long term reform.[126] The draft Property and Conveyancing Bill is a renumbered version of the English Law of Property Act, 1925 with its emphasis on the protection of property rights. While the Commission supported the existing practice of urban grants on leasehold tenure" with no option to convert", it advocated the extension and protection of grants in fee simple in agricultural lands. The inclination of the members of the Commission towards the English law of real property may be attributed to the fact that they had been trained exclusively in Anglo-American law. James's review of the Commission's Report is highly critical:

> "Having regard to the Reports of Commissioner Troup and the 1943 Land Tenure Committee a strong case needs to be argued to support freehold tenure. No case was argued by the Commission, which seems to have been totally unaware of the vast sums spent over the years to devise a system necessary to stimulate and sustain agricultural development in

Zambia."[127]

The Commission's Report was neither officially rejected nor adopted by government, but later legislation has shown total disregard for its recommendations. For example, the Trust Restrictions Act, 1970[128], despite the Commission's recommendations of elaborate trust for sale provisions abolished (except in a few cases) the creation of settlements and trusts.

(b) The Land Reform Proposals of 1970

In 1970 there was a move to introduce some reform in the tenure of agricultural land the effect of which would have been the repeal of the Agricultural Lands Act and its replacement with another. The main purpose was to prevent the selling of agricultural land "at a higher price than originally bought".[129] Alienation, whether by sale or gift, of freehold land, without the consent of the Minister was to be prohibited. Freehold title would no longer be granted. In his draft speech to the Cabinet, the then Minister for Lands, Mr Kalulu explained the rationale of the reform as being that the Agricultural Lands Act contained a loop hole which frustrated efforts to control transfers of agricultural land.[130] Under the Agricultural Lands Act consent is required for any transfer of land, but the Act also permitted the lessee of scheduled land to purchase the freehold from the State, the option to purchase, and a leaseholder who was desirous of circumventing the requirement of consent to assign, merely exercised the option to purchase, and with his freehold tenure he could

transfer his land to whom he wished.

These proposals did not, however, prove popular in the Lands Department. The then Acting Commissioner of Lands, Mr. D.I. McDougal was concerned with the limitation of the sale price to "no higher than originally bought". He expressed the view that this limitation would produce absurd results:

> "For instance, if Mr Banda paid K3,000 for 1,500 acres of unimproved land in 1967, is he to be restricted to selling in 1977 to the K50 originally paid to the B.S.A. Company in 1907? Similarly, one cannot expect C.O.Z. or any other source of finance to welcome legislation which will deflate the security of their mortgages in this way."[131]

He argued, further, that the prohibition of the profit motive would have the effect of stifling development because a landholder would not want to sell an undeveloped portion of his farm if he was not going to gain, financially, from so doing. In any event, as the Attorney-General pointed out, freehold tenure, by its very nature, granted the landholder the right to dispose of his property as he wished. The solution, therefore, lay in abolishing freehold tenure altogether, and the Minister proposed to make the following recommendations to Cabinet:[132]

i) All freehold should be converted to leasehold;

ii) The Cabinet should authorise the Minister for Lands and Natural Resources to pay compensation to persons losing their freehold title;

iii) Leases should be for any number of years not exceeding 100 years;

iv) The right to convert leasehold land to freehold should be discontinued;

v) Developers of land in the Reserves should be given leasehold titles to State land if they so desire.

All these recommendations (except that relating to compensation) were incorporated in the land reforms of 1975 under the Land (Conversion of Titles) Act, 1975.[133] They were also consistent with the policy of the ruling Party which had, from time to time, been announced by the President. Before discussing the reforms, Party policy on land tenure needs to be addressed as it throws some light on the nature of reforms that should have been expected.

(c) Party Policy on Land Tenure

The land tenure reforms of 1975 should be seen in the light of economic reforms which began with the President's announcement to the United National Independence Party's National Council at Mulungushi in 1968.[134] In April, 1968, the President invited a number of companies with strong ties with Rhodesia and South Africa to offer, at least, 51% of their shares to the government.[135] The following year, the President extended the invitation to mining companies. In 1970, the President asked foreign companies to transfer their businesses to the government, or offer 51% of their shares to the Industrial Development Corporation, a parastatal body. Foreign insurance companies were directed to wind up their affairs so as to leave room for the Zambia State Insurance Corporation. The President also directed expatriates in the retail trading industry to transfer their businesses to Zambians as their trading licences would not be renewed.[136]

It was soon realised, however, that these economic

reforms would encourage the emergence of a separate economic class which would exploit the less fortunate masses. Against this background, the President directed his attention to positive actions for the implementation of his philosophy of humanism. In his paper entitled "Exploitation of Man by Man" read at the Mulungushi conference of 1970 he analysed the impending problems and laid down guidelines for legislative reform. One major concern was the enunciation of a "Leadership Code", to prevent a leader from, inter alia, letting his private house, while continuing to occupy government housing. Another concern of the paper was a programme of land reform aimed at preventing the trend of land accumulation by affluent Zambians.[137] At the same time, the new land tenure system must be capable of promoting proper land utilisation and conservation.[138]

To those who were familiar with Party policy on land matters, the land tenure reforms could not have come as a complete surprise, but, in so far as these policies did not take any concrete legal form, they could not dispel the insecurity felt by many European farmers, a factor which had a considerable effect on agricultural production.[139] The Party's land policy was contained in the President's own policy document, Humanism in Zambia and A Guide to its Implementation.[140] It is clear from this document that land policy was influenced by cultural and economic factors. It is stated that land must remain the property of the State. It conceded that this is no departure from the society's traditional values:

> "Land was never bought. It came to belong to individuals through usage and the passage of time. Even then, the Chief and the elders had overall control although ... this was done on

behalf of all the people."[141]

Reform was necessary to ensure that agricultural land was productive for the benefit of the economy. This could not be done under a capitalist system which permitted land speculation.

While committing himself not to interfere with individual property rights, the President, in the same document, expressed his abhorrence of what he called "absentee landlordism",[142] an expression used to refer to ownership of land by persons not ordinarily resident in the country. Although not expressly mentioned in the document, the evil in "absentee landlordism" is not necessarily the fact that the landholder is resident outside the country, but that he is holding on to the land, not with the intention of putting it under production, but for purposes of speculation. The freehold system enables land speculation and rather than the security it confers encouraging the landholder to develop his land, robs him of the incentive to do so with the full knowledge that there will be no interference with his land rights.[143] This argument is antithetical to the classic argument that security of tenure which the freehold system confers will encourage landholders to invest their capital in the development of their land.[144]

In his address to the UNIP National Council at Matero in August 1969, the President reiterated his land policy. One additional justification mentioned was that land reform was necessary to ensure that all citizens had access to land, particularly in the future when, owing to population growth, wage employment would be scarce. In this respect,

it was important to encourage agriculture to develop on the basis of small family units rather than huge commercial farms run exclusively for the benefit of a few individuals.[145] Land policy must be geared towards discouraging land accumulation. While property rights would continue to be respected,

> "thought must be given to what is a desirable maximum size of land which an individual may own to ensure maximum utilisation. This is a matter which I want the Minister of Rural Development to study very closely using economic advantages as the main yardstick."[146]

At the time, the Lands Acquisition Bill was being debated in Parliament, but compulsory acquisition could not be used to prevent land accumulation. Inspite of Party policy pronouncements, it is surprising that land tenure reforms were not immediately put in hand and five years were to elapse before the Land (Conversion of Titles) Act was enacted.

(d) The "Watershed Speech", 1975

In his address to the National Council of the Party made between June 30th and July 3rd, 1975 the President announced the land tenure reforms effected in the Land (Conversion of Titles) Act, 1975.[147] While the 1970 land reform proposals of the Minister of Lands and Natural Resources may have been relevant, it is difficult to tell whether there was any significance in the timing for introducing the reforms. What seems to have triggered the announcement was the attempt by the Development Bank of Zambia to purchase a piece of land at an inflated price.

The facts surrounding this transaction emerge from the President's speech.

The facts are that by a conveyance dated 3rd April 1975, a Mr. Lipschild sold to a company known as Solar Investments (Zambia) Ltd., three properties: (1) subdivision A of plot no. 29 (size 0.100 of an acre); (2) the remaining extent of subdivision A of subdivision no. 29 (size 0.177 of an acre); (3) the remaining extent of plot no. 29 (size 0.229 of an acre). These three properties cost Solar Investment Ltd., K150,000. On the same day of 3rd April 1975, by another conveyance made between Solar Investments Ltd., and the Development Bank of Zambia, the third plot was sold to the Development Bank of Zambia for K100,000. Of these properties, only one was developed in the sense that there was an antique shop; the other two, including one sold to the Development Bank of Zambia did not have any buildings on them and were, therefore, undeveloped. The President directed that Solar Investments Ltd., should refund the money and castigated the Development Bank of Zambia for throwing away public funds.

It was, therefore, because of land speculation that the reforms were introduced. The President stated that people who had bought land cheaply earlier on were demanding astronomical prices for it a few years later. He reiterated the Party's consistent stand on land polcy that "land is a gift from God and cannot be sold and especially be made the subject of speculation by inhuman exploiters".[146] The nature of the reforms announced were that with effect from 1st July 1975, all freehold titles to land were abolished and all land held by commercial farmers under freehold title

converted to leaseholds for a period of 100 years. Since the policy of the Party "is that all land must be fully and effectively productive, unutilised tracts of farm land will, with immediate effect, be taken over by the State. We cannot afford to have large tracts of land idle".[149] The President also announced that all vacant plots and all vacant and undeveloped land in and around Lusaka and all other cities and towns would be taken over by local authorities.[150] Although lacking in detail, the "Watershed" speech spelt out the major focus of the reform and it was left to the legislature to work out and state the statutory provisions which would effectuate the broad principles expressed by the President.[151]

2. The Land (Conversion of Titles) Act, 1975

The purpose of the Act is summarised in its long title as the vesting of all land in the President; the conversion of titles to land; the imposition of restrictions on the extent of agricultural holdings; the abolition of sale, transfer and other alienation for value; and other incidental matters.

(a) Application

The Act was made to have retrospective effect. Having become law on the 18th of August 1975, section 2 made its application retrospective to 1st July 1975. This date

coincides with the day on which the President announced the land reforms in the "Watershed Speech" to the ruling Party's National Council. The practice of giving legislative Acts retrospective force is generally deprecated because of unfairness to those who had conducted their affairs knowing that such conduct was within the law. In this particular case the unfairness may have been reduced by the President's ample notice of the impending reforms.

Whether or not the Act applies to all categories of land, in particular to the Reserves and Trust Land is of utmost importance, if control is to be extended to land under customary tenure. Section 2 states that, unless a contrary intention appears, land includes "land of any tenure". This broad definition would seem to include land under customary tenure. Nevertheless, most of the provisions in the Act do not apply to land governed by customary land tenure. Moreover, in the absence of registered title, as is the case under customary land tenure, it is not easy to control dealings in land.

(b) Conversion of Freeholds into Leaseholds

To enable the State to acquire the power of control over land hitherto held in freehold, it was necessary to convert freeholds into leaseholds. Section 5 meant to achieve this purpose reads:

> "Every piece or parcel of land which immediately before the commencement of this Act was vested in or held by any person -
> a) absolutely or as freehold or in fee simple or in any manner implying absolute rights in perpetuity; or
> b) as a leasehold under any lease granted or deemed to be granted by or held of the

> President for a term of years extending beyond the expiration of one hundred years from the date of the commencement of this Act
> is hereby converted to a statutory leasehold and shall be deemed to have been so converted with effect from the 1st day of July, 1975."

The conversion, therefore, only applied to freehold estates and leases granted for periods in excess of one hundred years. Landholders who enjoyed freehold estates were to be found along the line of rail in what, during the colonial days was referred to as North-Western Rhodesia. Elsewhere in North-Western Rhodesia, agricultural land had been alienated in leasehold for periods of 999 years. These too were, under section 5, reduced to statutory leases of a hundred years. Similarly, those who had taken advantage of the Agricultural Lands Act and converted their leaseholds into freeholds, suffered like the rest, in the diminution of their estates. Section 5 did not affect landholders in the Eastern Province where, as part of the North-Eastern Rhodesia land policy, leases of only 99 years had been granted.

It is submitted that an opportunity to rationalise the land tenure structure was missed, as section 5 resulted in the existence of three types of leases, the thirty year leases under the Agricultural Lands Act, the 99 year leases in the Eastern Province and urban areas elsewhere, and the statutory leases of a hundred years. Further, the opportunity of converting leaseholds into freeholds under the Agricultural Lands Act, which provided an incentive to develop agricultural land falling under the Act, has been extinguished.

Section 5 also had an adverse effect on the interests

of lending institutions. The Troup report of 1954 had advocated leases of 99 years for urban land and 999 years for agricultural land. The possibility of re-zoning and re-developing an area in the course of time would seem to suggest that a 999 year lease is too long for a developing country whereas a hundred year lease is more reasonable.[152] The crucial determining factor which may have influenced Troup in proposing 999 year leases for agricultural land was the attitude of lending institutions at the time. Private commercial banks were interested basically, in providing credit mainly on the security of either a first mortgage of freehold property or an assignment of a long lease. This consideration, although still prevalent in the private commercial banking sector is less crucial at present than it used to be before because of the growing role of government institutions in the dispensation of loans. Loan facilities are more and more becoming the obligation of government. This change in the role of government was succinctly heralded by the President who said:

> "The question of security for obtaining loans from banking and other credit institutions will pose no problems as it is the intention of government to make adequate arrangements to meet this contingency in future."[153]

Since 1979, the government has been operating two such special institutions to cater for farmers.[154] The Act provides for the renewal of leases for further terms of one hundred years except where the tenant has "failed to comply with or observe any term, condition or covenant of the lease where the non-compliance or non-observance is such as renders the lease liable to forfeiture".[155] It is clear from this provision that a distinction is drawn between

those terms and covenants, non-compliance with which may lead to forfeiture and those where it may not. But the Act does not shed any light on which covenants fall into which category. Resort must, therefore, be had to the common law.

(c) Compensation

The issue of whether or not compensation is paid is not only important as part of a fundamental property right, but it is also important as an incentive permitting an investor to recoup what he has expended in the development of agricultural land. In the proposals put forward by the Minister in 1970, compensation was to be paid for the conversion of freeholds to leaseholds and in his announcement of the reforms of 1975 the President said that compensation would be paid. By the time the Act was passed, the idea of such compensation had been dropped. Instead it was enacted that no compensation would be paid by the President or any other person by reason of the conversion of the nature of the title to land or "in respect of the extinguishment, restriction or abridgement of any rights or interests in or over land resulting from the operation of the provisions of this Act".[156]

Compensation is, however, payable in a case where the statutory lease has expired by effluxion of time, but has not been renewed. In this case "just and fair compensation" must be paid in respect of the "unexhausted improvements" defined as:

> "anything resulting from the expenditure of capital or labour and includes carrying out of any building, engineering or other operations in, on, over or under land, or the making of

> any material change in the use of any building or land."[157]

The provisions relating to compensation raise two specific issues - the law relating to fixtures, and the nature or scope of unexhausted improvements. Fixtures are chattels which have been so affixed to the land as to become, in law, part of the land. The common law rule is quicquid plantatur solo solo cedit - that which is affixed to the soil becomes part of the soil. It is always a question of law whether an article is a fixture or not. The test which has been evolved through the cases is that of the degree and purpose of annexation. The degree of annexation is explained by Megarry and Wade in terms of "substantial connection with the land or a building on it".[158]

At common law, the tenant was entitled to the chattels while articles which had by annexation become fixtures remained on the premises and were the property of the landlord. The English Agricultural Holdings Act, 1908[159] permits tenants to remove agricultural fixtures which would otherwise pass on to the landlord. The Land (Conversion of Titles) Act is silent as regards the right of the statutory lessee to remove agricultural fixtures. Instead, it provides for compensation to be paid to the statutory lessee in respect of unexhausted improvements whose definition would seem to include fixtures.

Moreover, it has been argued that the definition of "unexhausted improvements" in section 3 does not cover the cost of servicing a plot with the effect that such cost would not be included in the amount of compensation. In a paper submitted to the Law Development Commission, the Chief

Valuation Officer in the government's Department of Valuation stated that the Land (Conversion of Titles) Act:

> "hampers development in that the cost of servicing a plot cannot be recouped; this is not to be confused with the development value which is conferred on land by society as a whole."[160]

He suggested that the cost incurred in servicing a plot would be recoverable if the definition of unexhausted improvements could be amended so that to "operations in, on, over or under land" could be added "or thereto" or some similar phrase. Responding to this observation the Commissioner of Lands argued, however, that the definition was wide enough to cover service costs, and indeed, any money expended in developing the plot.[161]

While no authority was cited by the Commissioner in support of his interpretation, it would, nevertheless, seem to be the literal meaning of the definition. Further support for this view lies in the parliamentary debates that preceded the Act, in particular, the contribution of the Minister of State for Legal Affairs and Solicitor-General who said:

> "Therefore, Mr Speaker, Sir, there is no need for fear that people, who, through their labour or money, have improved land will not be compensated for such labour or money. All that this Bill says is that there will be no value placed on such land on which no labour or money has been spent."[162]

Nonetheless, some members of the Law Development Commission pointed out that, in practice, service charges were not recoverable. They also emphasised that even after a vendor has serviced a plot, for instance, if he subdivided a piece of land, paid surveyors' fees, and built roads, he could not sell such a plot because it was regarded as undeveloped.

This being the case, the Law Development Commission, while expressing satisfaction that the definition would cover service costs, nevertheless felt that, for the purposes of the administration of the Act, the definition should be clarified. It recommended that the definition of the term "unexhausted improvements" should be amended to allow, expressly, the recovery of service charges and other expenses actually incurred in the development of the land.[163]

3. Land Control under the Land (Conversion of Titles) Act, 1975

The importance of the Act lies primarily in its provisions relating to the control of land. The Act enables the government to control land in two ways - one is by restricting the right of the leaseholder to transfer land and making the consent of the President mandatory to any such transaction, and the other, by the imposition of covenants regarding, inter alia, the use of agricultural land. The Act also empowers the government to impose a maximum area of agricultural land which a person may hold, at any given time. It is also important to point out at the outset that the application of the Act is so broad as to encompass scheduled agricultural land falling under the Agricultural Lands Act, a factor which makes scheduled land subject to two systems of control, that under the Agricultural Lands Act, and the other, under the Land

(Conversion of Titles) Act. Whether these two systems are compatible with one another is an issue that requires attention.

(a) Restriction on Subdivision and Alienation of Land

Section 13(1) states that no person shall "subdivide, sell, transfer, assign, sublet, mortgage, charge, or in any manner whatsoever encumber or part with the possession" of his land without the prior consent, in writing, of the President. The Act does not mention the consequence of failure to secure the requisite consent. There has been little judicial pronouncement, but the case of Hina Furnishing Lusaka Ltd. v. Mwaiseni Properties Ltd.,[164] throws some light on the matter. In this case the plaintiff sought an injunction to restrain the defendant from interruption of the plaintiff's peaceful and quiet enjoyment of its occupancy of demised premises. The premises were demised under a contract to lease which was neither executed nor entered into with the consent of the President. The action arose out of the defendant's re-entry and possession upon the plaintiff falling into several months' rent arrears. Interpreting section 13(1), Kakad, J., found that the defendant was strictly restricted from subletting the premises to the plaintiff without consent of the President and said:

> "I, therefore, consider that in the absence of the written consent of the President, there was no legal estate or interest on the premises conveyed to the plaintiff".[165]

The Court reviewed cases where an equitable remedy of either

specific performance or an injunction has been granted and decided that since a condition precedent, namely, the obtaining of Presidential consent, had not been fulfilled, the application for an injunction must be refused.[166] This case, therefore, is authority for the proposition that failure to obtain consent reduces the agreement or transaction to one without any legal or equitable effect whatsoever.

On the grant of his consent, the President is empowered to impose such terms and conditions as he thinks fit.[167] Subsection 3 provides a breakdown of the nature of the terms the President may impose. As much of the controversy surrounding the Act has arisen from the exercise of the President's authority under section 13(3) it has been reproduced:

> Without prejudice to the generality of subsection 2, the President may, in granting consent fix the amount that may be received, recovered or secured -
> a) in the case of a disposition by sale, transfer or assignment, as the price, premium or consideration;
> b) in the case of a disposition by way of a sublease, as premium, consideration or rent;
> c) in the case of a licence to occupy, by way of premium, consideration or rent or, as the case may be, by way of periodical payments for use and occupation;
> d) in the case of a mortgage or charge, as a debt or advance:
> Provided that in fixing any amount under this subsection no regard shall be had to the value of the land apart from the unexhausted improvements thereon".

Section 13 has raised numerous problems since the enactment of the Act. These problems arise from defects pertaining to the application of section 13, but at the centre, is the effect that section 13 has had on

agricultural land. These defects are (i) the lack of regulations governing the determination of prices, premiums or rent; (ii) the absence of an appellate system such as a land tribunal to which aggrieved parties could appeal against decisions of the Commissioner of Lands in matters pertaining to land; (iii) the absence of enforcement provisions for contravening the section, as with the rest; and (iv) administrative delays in processing applications for consent.

(i) Lack of Criteria for Determining Prices

This defect has manifested itself in two situations - one of these is when the Minister reviews the prices fixed by the Commissioner of Lands (acting on behalf of the President), and the other is when valuers undertake the valuation of the property. The Working Party of the Law Development Commission allege that the absence of principles for price determination has encouraged corruption.[168] The Working Party found that at the end of 1975 and early 1976 "a situation prevailed where the Minister could alter prices on a massive scale".[169] It was feared that such alteration of prices created opportunities for corruption because of the absence of regulations as to the procedures to be followed in such an exercise.

In fact, during the period referred to, there was in existence the Lands Disposition Advisory Committee which advised the Commissioner of Lands on the prices that should be fixed, or rent to be charged. At the time, the problem had to be faced that not all the members could conceive of land "without market value", and it is unfortunate that the

Act itself does not define "market value". Reviewing the work of the Committee in 1976, the Minister took a strong exception to one of the Committee's comments in defence of its determination, to the effect that the property under consideration was situated in a populous area. This comment gave the Minister the impression that, in coming to its decision, the Committee had been influenced by the location and environment of the property, considerations which, in the Minister's view, meant taking into account the "market value" of the property.[170] The Minister himself, although empowered to make regulations under section 21, complained against what he saw as the lack of any principles or formulae upon which consents were given.[171]

In practice, where the sum demanded by the vendor is lower than the value of the improvements, consent is given as a matter of course and there is no insistence that the figure recommended by the government valuers bind the parties.[172] But where the sum demanded is in excess of the figure of government valuers, then the figure determined by government valuers must prevail, irrespective of the agreement of the parties. In the early days of the Act, there appears to have been some suspicion in the mind of the Minister, that market value was unconsciously being taken into account. This suspicion led him to ignore the recommendations of the Advisory Committee. Inspite of the fact that the recommendations were based on government valuation, the Minister, seemingly indiscriminately, altered the figures downward, without showing any cause for so doing. In some cases the reduction was by forty-five percent of the proposed price.[173] Part of the blame must,

however, be borne by the applicants themselves, who, in the hope that when the figure is reduced, the final figure would be close to what they want, deliberately inflated the asking price. Moreover, the present practice where a round figure is proposed for the whole property makes it difficult for the government to tell how much reflects the value of movables - where the property includes furniture etc., and how much is for buildings and fittings. Hence the suggestion by the Law Development Commission that any application for consent to assign be accompanied by a breakdown of the values of various kinds of property included in the proposed assignment.[174]

The control exercised by the President under section 13 appears to be restricted to the imposition of terms and conditions upon which consent will be given. It does not extend, however, to the person of the proposed assignee, as is required under the Agricultural Act. If, for agricultural land, the quality of the proposed assignee was expressly included, this would have ensured that there is uniformity in the control of both scheduled and unscheduled agricultural land, and that all agricultural land is alienated to interested potential farmers. It is for this reason, among others, that since 1978 the Agricultural Lands Board has been calling for all agricultural land to be brought under its supervision. At its meeting held on Thursday, 4th May, 1978, the Board accused the Lands Department of allocating unscheduled land without assessing the proposed assignee's ability to utilise it, and described the process of the exercise of consent as a mockery. It proposed that all agricultural land should be brought under

its jurisdiction. This proposition was repeated in 1982 when it also observed that unscheduled farms were not being utilised because the Lands Department was failing to enforce development requirements.[175] That same year, the same demand was pressed upon the Commissioner of Lands who responded that he, personally, had no objection and promised to take up the matter with the Minister.[176] But at its meeting held on the 10th of February, 1983, the Board qualified its demand to farms of between forty to fifty hectares.

Asked as to why, inspite of the repeated requests the government had not yet placed unscheduled agricultural land under the Board, the Deputy Commissioner of Lands explained that, officially, there was no objection to placing unscheduled land under the Board. The problem, as he saw it, was that the Board would not cope with additional responsibility.[177]

(ii) Absence of an Appellate System

The Act does not provide for any appeal by a vendor who is dissatisfied with the figure which the President has determined as a condition for giving his consent. The present practice, in cases of disagreement over the maximum price, is that applicants are advised to withdraw their applications and submit fresh applications for consent so that valuation can be repeated.[178] This practice is very inconvenient and time-consuming. An appellate system, which would involve the engagement of independent valuers would appear to be a more satisfactory solution.

(iii) Absence of Enforcement Provisions

The Working Party of the Law Development Commission saw the absence of provisions for enforcement as a serious flaw. The Land (Conversion of Titles) Act provides no penalties for persons who contravene its provisions. Persons who sell or sub-let land without the consent of the Commissioner of Lands contrary to Section 13(1) cannot be prosecuted. The Law Development Commission felt that "this serious omission should be remedied by amending the Act so that there should be provisions specifying offences and their penalties".[179]

(iv) Delays in Processing Applications for Consent

Delay in processing applications for consent is an administrative problem which has caused an outcry from those involved in property transactions - vendors, sublessors, purchasers, legal practitioners, etc.[180] The Commissioner of Lands is said to have attributed the delay to shortage of valuation surveyors in his department.[181] His proposal is said to be the creation of five new posts of valuation surveyors who should be deployed in the Copperbelt, Southern and Eastern Provinces and the Lands Department in Lusaka. The information supplied to the Law Development Commission by the Law Association of Zambia and the Valuation Department show that delays could be reduced considerably if the proposals to increase the number of professional staff at the Lands Department and the Valuation Department is accepted and implemented. As a temporary measure, the Law Development Commission suggested that the Lands Department could make use of private valuers to clear the backlog. It is also interesting to note that the Law Development

Commission felt that section 13 is too wide in scope since it also includes tenancies for short periods.[182] It recommended that the requirement of consent be limited to transactions which must be registered under section 4 of the Lands and Deeds Registry Act.[183] Such a step will reduce the number of applications for consent and thereby ease the pressure on the Valuation Department.

(v) The Concept of Land Without Value

The proviso under section 13 that in fixing any amount under this subsection no "regard shall be had to the value of the land apart from the unexhausted improvements thereon" has led to the conclusion that undeveloped land is valueless. When the government alienates undeveloped land, it is only the cost of servicing and a year's rent in advance which is required from the successful tenant irrespective of whether the land is in an urban or rural area. The fall in the cost of virgin land has had the effect of increasing the demand for land. In his Memorandum on Land Administration, the Commissioner of Lands attributes scarcity of land to the Land (Conversion of Titles) Act saying:

> "As virgin land is regarded as having no value, the direct consequence has been that the demand for it has increased since even those who would not have thought of acquiring it now compete with the well-to-do who, before the enactment of the said Act, were able to deal in land."[184]

Bruce and Dorner have pointed out that land as a free commodity is more suited to a purely subsistence economy or where all land is owned by the State and used under collective management or State farm system because in such

systems incentives for agricultural production are provided by central planning authorities through a variety of non-market mechanisms, while individuals are rewarded through a standardised system of payments for efficient tasks performed.[185] They observe that "it is much more difficult to conceive of land as a free good and without value in a system such as that of Zambia, relying on private entrepreneurs operating in a mixed economy and presumably motivated mainly by the prospect of earning a living from the production on their individual leaseholds and their own improvements".[186]

Moreover, they argue, whenever there is scarcity of a given commodity which is more highly valued by individuals than its actual cost, there arises a need for some system of rationing and in any rationing system, the setting exists for a possible dual market - the publicised and the unpublicised, in which government officials who have to ration the land participate. While conceding that this does not actually happen in Zambia, they do warn, however, that the environment exists where this may occur.

The possibility of corruption has already been acknowledged by the government and one of the terms of reference of the Law Development Commission was that it should investigate the "alleged misuse of certain sections of the Act for the personal benefit of officials in the Ministry of Lands and Agriculture".[187] The Commission felt, however, that since it lacked statutory power to compel and receive evidence, it could not perform such a task. The Law Development Commission proposed the establishment of a land tribunal to hear appeals relating to, inter alia, the

exercise by the President or his delegate, the Commissioner of Lands, of the powers under the Land (Conversion of Titles) Act.

Bruce and Dorner see the solution to corruption in land allocation as the introduction of a tax or rent, the increase of which, would effectively reduce the demand for agricultural land. Further, they argue that the infrastructure which makes particular land preferable is the result of investment of public funds, therefore, the public and not only those who succeed in securing the land, must also benefit from such investment. This can be done by the introduction of differential rentals based on the value of the infrastructure.

Anxiety concerning corruption has been partially eliminated by the new procedure for land alienation. The new procedure seeks to effectuate the decentralisation of land administration. To this effect:

> "all District Councils will be responsible, for and on behalf of the Commissioner of Lands, in the processing of applications, selecting of suitable candidates and making recommendations as may be decided upon by them. Such recommendations will be invariably accepted unless in cases where it becomes apparent that doing so would cause injustice to others or if a recommendation so made is contrary to national interest or public policy."[188]

In so far as it affects unscheduled agricultural land this procedure is only a partial solution because it applies only to the applications for vacant or undeveloped land. It does not apply to the exercise of consent by the President under section 13. If a district council is dissatisfied with the decision of the Commissioner of Lands an appeal must be made to the Minister of Lands and Natural Resources within thirty

days from the date the decision of the Commissioner of Lands becomes known.[189] The decision of the Minister is final.

The decision to decentralise land administration may be defended on the basis that it speeds up the process of allocation, thus easing the pressure on the Commissioner of Lands whose function is to oversee that public policy considerations and the national interest are not jeopardised. The question remains, however, as to whether land administration must continue to be fragmented. Moreover, while district councils have been given the opportunity to participate in the process of land allocation, it is curious that their responsibilities must end there. It is submitted that councils, who enjoy the advantages of closer proximity to farmers, should be involved in the process of enforcing development covenants, a task which has proved difficult for the Lands Department.

The fear of corruption is not the only result of the concept of land without value. The abolition of compensation for undeveloped land and the sale of undeveloped land has "caused the release of vacant land for development to be drastically retarded primarily because there is no incentive for private landowners to subdivide or sevice land".[190] Where the land has no improvements, government can use its power and compulsorily acquire the same. But where a person has a large piece of land on which there is, for instance, a house occupying a tiny proportion of the farm, government has to find the funds to compensate the owner and such funds are not readily available. As it has already been pointed out in connection with the Lands Acquisition Act, such cases have posed a problem to the

government because it has no power under the Lands Acquisition Act to compel the owner to subdivide and surrender the undeveloped portion of the farm.

The introduction of differential rentals, or its increase suggested by Bruce and Dorner, would make the continued possession of undeveloped land burdensome as such land would not contribute in any way towards the payment of rent. Landholders might, therefore, find it preferable to subdivide and thus remain with a portion which they have the ability to exploit profitably. The most serious problem wth the idea of differential rentals is the mechanics of implementation. The determination of what rent to charge for a given piece of land would depend on so many variables - location in relation to infrastructure and the cost of such infrastructure; soil fertility; climatic factors; types of crops which may be grown - in fact, the whole modicum of land potential. To complicate the whole position, all the above factors tend to change over time and, therefore, periodical reviews would be necessary so that the rent reflected the real value of the land at any given time. Nonetheless, it would appear to be the preferable course because it would have the following effects: (1) it would minimise the demand for serviced land and consequently reduce the volume of work in the Lands Department; (2) it would raise revenue which government should invest in improving the infrastructure in less developed areas; (3) it would encourage those who have more land than they have the capacity to develop to surrender the undeveloped portions to the government; and finally (5) it would encourage land development in that landholders would be forced to produce

more, if only, to enable them to pay the rent.

(b) Restriction on the Number of Agricultural Holdings

The policy of empowering government to restrict the size of agricultural land was announced, for the first time, by the President in his address to the UNIP National Council in 1970. In coming to a decision of how much land should be permitted to an individual several factors would be taken into account namely, the type of activity intended for the land; the fertility of the land; the irrigation potential of the land; and whether or not the prospective lessee is an individual, a company or a co-operative society.[191] In pursuance of this policy section 17(1) states:

> "The Minister may, by regulations prescribe the maximum area of agricultural land (whether or not it has unexhausted improvements) which may be held by any person at any one time for any specified purpose; and different maxima may be so prescribed for different areas, districts or provinces."

This provision is meant to prevent land accumulation, thereby enable others to have access to land. During the 17th National Council meeting held in December 1982, the Council resolved that in order to create an egalitarian society under the philosophy of humanism, "no one private individual or private organisation shall own more than one farm, and that appropriate steps be taken to establish the size of the farm a private individual and private organisation would be allowed to develop".[192]

The Commissioner of Lands has requested the Director of Agriculture to initiate steps to implement the National Council resolution,[193] but owing to the difficulty of the

task no such regulations have been made. Nevertheless, in the Reserves and Trust Land it has been decided to restrict alienation to no more than two hundred and fifty hectares per person.[194]

(c) Development Covenants

In order to secure the development of agricultural land the Minister has made regulations which prescribe the covenants and conditions of statutory leases of agricultural land.[195] These covenants have largely been moulded on the basis of the Agricultural Lands Act. Under the covenants the lessee must confine the use of agricultural land to agriculture only. He must maintain all improvements and develop the land "in accordance with the principles of good husbandry".[196] The lessee is enjoined not to allow the land to remain idle for a period of more than three years except with the previous written consent of the lessor. As under the Agricultural Lands Act, the statutory lessee must reside personally on the land except where the lessee is a body corporate in which case it must ensure the residence of a manager to take charge of farming operations. Such a manager must be approved by the President, as the lessor. There is also a covenant prohibiting abandonment. But unlike the Agricultural Lands Act, the regulations do not provide for minimum development requirements.

While the covenants may be seen as adequate, the problem is really one of enforcement. The Lands Department is the sole body responsible for the enforcement of the covenants. The department is also responsible to ensure

that land falling under the Agricultural Lands Act is developed in accordance with the provisions of this Act. It has already been pointed out that farm inspections have not been regular due to transport problems. This problem has affected both scheduled and unscheduled land. The Agricultural Lands Board observed, on one occasion, that many unscheduled farms were not being utilised and that the Lands Department was failing to enforce development covenants attached to statutory leases. The problem is the means with which to enforce these covenants. One may also add that the request of the Agricultural Lands Board that unscheduled land be brought under it, while such action may help ensure that land is only alienated to genuinely qualified farmers, will not necessarily lead to compliance with development covenants, because the same problem of the mechanics of enforcement will remain.

(d) Extension of Control Under the Land (Conversion of Titles) (Amendment No. 2) Act, 1985[197]

The Working Party submitted its Report in 1981. The Report not only suggested amendments to the Land (Conversion of Titles) Act, but also drafts of the amendments that would require legislative action. Two amendments have been made so far. The first amendment related to the payment of fees by applicants for consent.[198] The amendment Act which is presently to be considered was the second. None of these amendments, however, bear any relevance to the recommendations of the Working Party, which are not, to all intents and purposes, so radical or far-fetched, as to

change the government's policy on land matters.

The second amendment deals with a matter which was not even one of the issues to be considered by the Working Party. It deals with control of alienation of land to non-Zambians. It may be recalled that one of the complaints of the Agricultural Land Board was that there was no policy or directive from the Minister concerning alienation of land to non-nationals. The amendment makes some attempt towards settling the problem.

Section 2 of the Act provides that no land in Zambia "shall as from the 1st of April 1985 be granted, alienated, transferred or leased to a non-Zambian". The proviso saves the interests or rights acquired by non-Zambians prior to the said date. Then there follows a number of exemptions from the above prohibition. The first exemption applies to a person "approved as an investor in accordance with the Industrial Development Act[199] or any other law relating to the promotion of investment in Zambia".[200] Under this exception, therefore, one must be an investor under the Industrial Development Act. The purpose of the Act is to provide for the licensing and control of manufacturing enterprises; to provide incentives for investment; to regulate the making of contracts relating to the transfer of foreign technology and expertise to enterprises operating in Zambia, and to provide for matters connected with or incidental to the foregoing. The expression "investor" does not appear anywhere in the Act nor does it explain how one can come to be regarded as one. The Act gives the impression that the investor is the manufacturer because it deals at length with manufacturing licences and technology

transfer contracts. It is just what the title suggests - industrial development, but in a narrow sense which excludes the agricultural industry. The central role of agriculture in the whole gamut of industrial development in Zambia does not feature in the Act. There is therefore a need for clarification of the expression "investor" so that the Act does not thwart the efforts of genuine farmers who are not Zambians.

The second exemption relates to non-profit making, charitable, religious, educational or philanthropic organisations or institutions which are registered and are approved by the Minister under section 13A. The third exemption relates to where the interest or right arises out of a lease, sublease or underlease for a period not exceeding five years or a tenancy agreement. In other words, the President may alienate land to a non-Zambian and/or consent to a transfer of land to a non-Zambian so long as the transfer or the interest in the land is a lease for a term of, at the most, five years. It is generally the case, however, that the kind of investment which would be beneficial requires a lot more time to mature. In a way, therefore, the five years limit must be seen as a disincentive to investors, particularly those who may wish to make long term investments or grow crops that require a minimum of two years to mature. Some assurance of automatic renewal of the leases would have helped allay the fears of non-Zambians. The fourth exemption relates to an interest which is inherited or transferred under a right of survivorship or other operation of law. In any other case, the President's consent must be secured. Since a gift does

not transfer land by operation of law, it requires consent.

The severe restriction on the President's power to alienate land or consent to dispositions to non-Zambians under this amendment may have far-reaching consequences on the development of agricultural land. For many Zambians the raising of funds for agricultural development on a commercial scale is rather difficult. Even their reasons for acquiring a farm are, often, inconsistent with agricultural development. They may buy a farm to use "as a week-end pleasure resort or a place to retire to" rather than for serious agriculture.[201]

The full impact of the amendment will depend on who qualifies as an investor under the Act. The criticism which has been levelled against the Act should not be taken to mean that agricultural development must, for ever, depend on foreign nationals. However, non-Zambians will still be required to grow crops which are not, at present, being grown by Zambians. It is probable that the President's consent will not be unreasonably withheld, particularly, where the non-Zambian is bringing money into the country, to grow a crop not widely grown such as cotton, sunflower, virginia flue-cured tobacco, etc. This is all the more important because the Act applies to all land - scheduled and unscheduled.

E. CONCLUSIONS

Until 1975, land reform in Zambia was piece-meal, reflecting a tendency to respond to a given problem or difficulty rather than a comprehensive review of the existing legal framework. The Land Commission Report of 1967 proved irrelevant because the Commission did not respond, adequately, to the policy of the Party in power. The first measure introduced by the government was the Lands Acquisition Act meant to enable government to take over all undeveloped or unutilised land in the hands of, principally, absentee owners. The problems involved in the implementation of the Act have rendered its importance as a tool for land development insignificant. The Land (Conversion of Titles) Act, 1975 introduced, for the first time, wholesale control of all agricultural land, indeed of all land. Prior to this Act, a small proportion of land-scheduled land, continued to be subject to the control of the Agricultural Lands Board. The Agricultural Lands Act, however, is deficient in some respects. It must also be brought into conformity with the provisions of the Land (Conversion of Titles) Act.

The fact that the application of the Land (Conversion of Titles) Act also extends to scheduled agricultural land means that the owner of a scheduled farm is required to make two applications for consent - one under each Act. This is not only cumbersome for the applicant but it is also time-consuming. One way of avoiding this is to place all agricultural land in State Land under one body. Already, there are too many bodies on which the development of land depends, and the recent decentralisation in the allocation

of land has added to the number of land administrators.

In terms of land control, there are some similarities in the provisions in the Agricultural Lands Act and the covenants in the schedule to the Land (Conversion of Titles) Regulations binding statutory lessees. There should, therefore, be no problem to the creation of a uniform system of land control and land administration. There is however, the practical difficulty of enforcing the covenants under the Regulations, and the development requirements under the Agricultural Lands Act. The ideal solution would appear to be to strengthen the staffing position at provincial level, and create district offices where land officers can be placed. If the government is intent on creating a role for local authorities in the administration of agricultural land, as it has demonstrated by giving them power to allocate land, then it should also extend to them the duty to monitor the use being made of agricultural land within their districts. Unless there is some improvement in the method of monitoring farms, knowledge of the state of their development will continue to be haphazard and the law will be ineffective in promoting agricultural development.

The new amendment to the Land (Conversion of Titles) Act has caused a definite degree of apprehension. It is in the manner of exercise of the limited powers of the President that the public will be interested. A strict denial of land to non-Zambians, except in the form of leases for a term of five years, at a time when the Zambian farmer is handicapped by both lack of experience as well as the shortage of capital, may in the long run destroy the existing agricultural base.

NOTES

1. James R.W., Land Tenure and Policy in Tanzania, (East Africa Literature Bureau, Dar-es-Salaam, 1971), p. 169.

2. See Sorrenson, M.P.K., Land Reform in the Kikuyu Country, (Oxford University Press, Nairobi, 1967), pp. 15-33.

3. James, R.W., "Land Tenure Reform in Retrospect", Dar-es-Salaam University Law Journal, 1971, 3, 28.

4. Kaunda, K.D., Humanism in Zambia and A Guide to its Implementation, Part 1, (Zambia Information Service, Government Printer, Lusaka, 1965), p. 14.

5. Cap 87 of the Laws of Northern Rhodesia.

6. James, R.W., "Land Tenure Reform in Retrospect", op. cit., p. 28.

7. No. 2 of 1970.

8. No. 20 of 1975.

9. James, R.W., Land Tenure and Policy in Tanzania, op. cit., p. 169.

10. It has been pointed out that "there are social and political repercussions arising from the creation of a landless class and an ever-present tendency towards land fragmentation and costly law suits with the rising costs of land", James, R.W., Land Tenure and Policy in Tanzania, op. cit., p. 171. C.f. McAuslan, J.P.W.B., "Control of Land and Agricultural Development in Kenya and Tanzania", in Sawyer, G. (ed.), East African Law and Social Change, (The East African Institute of Social and Cultural Affairs, Nairobi, 1967), p. 214.

11. Land (Conversion of Titles) Act, 1975, s.4.

12. G.N. No. 1345 of 1975.

13. This expression emanates from the common reference to farms declared to fall under and contained in the schedule to the Agricultural Lands Act as "scheduled farms".

14. Interview with the Deputy Commissioner of Lands, Mulungushi House, Lusaka, 10th April, 1985. Pre-1975 Annual Reports of the Lands Department are unhelpful because they only give figures under either freehold or leasehold, but not the acreage of "scheduled" leasehold farms. In addition, figures were found to change over time as lessees converted their leases to freehold. But the figures compiled by the Land Use Department show that the overall total of scheduled

agricultural land is, approximately, 622,439 hectares with Kalomo, Choma, Mkushi, Kabwe and Chisamba, in order of importance, sharing the majority of the farms.

15. S.5.

16. It is rather curious that the Zambia Agricultural Development Bank (ZADB) established under the Zambia Agricultural Development Bank Act, 1979 for the purpose of dispensing loans for agricultural ventures is not represented on the Board.

17. One such complaint challenging the constitution of a quorum at a particular meeting of the Board has been lodged with the Investigator-General.

18. Memorandum from the Minister of Lands and Natural Resources to the Executive Council dated 28th June, 1963, Lands Department File ref: LA/11,204/1/1.

19. No. 42 of 1963.

20. "Decisions of the Minister on the Recommendations of the Agricultural Lands Board during its meeting held on the 23rd of April, 1974", Lands Department File ref: LA/11,001/6.

21. Ibid.

22. Ibid.

23. This argument is contentious. In neither case would the proposed assignees be deemed to be squatters. At most they were merely licensees as the arrangements were on a "caretaker" basis. The lessee could not be said to have "parted" with possession, so as to require State consent. There was, therefore, no policy which could be said to have been contravened.

24. Minutes of the Agricultural Lands Board, (hereinafter referred to as the A.L.B.), Meeting held on 9th and 10th July, 1974.

25. Minutes of the A.L.B. Meeting held on 28th January, 1975.

26. Northern Rhodesia, Hansard, No. 101J, dated 17th November 1960, Columns 431 and 432.

27. Ibid.

28. Minutes of the A.L.B. Meeting held on 27th October, 1982. Contrast the three cases mentioned earlier where the Minister rescinded the decision of the Board on the ground that it was against government policy for people to occupy leasehold land without government consent.

29. Ibid.

30. Ibid.

31. Minutes of the A.L.B. Meeting held on 27th October, 1982.

32. Minutes of the A.L.B. Meeting held on 10th February, 1983.

33. Ibid.

34. Minutes of the A.L.B. Meeting held on 12th February, 1981.

35. Minutes of the A.L.B. Meeting held on 3rd December, 1981.

36. Minutes of the A.L.B. Meeting held on 25th February, 1985.

37. SS. 17 and 18.

38. See for instance G.N. No. 16 of 1980.

39. Minutes of the A.L.B. Meeting held on 16th February, 1978.

40. Minutes of the A.L.B. Meeting held on 4th May, 1978.

41. Minutes of the A.L.B. Meeting held on 16th August, 1979.

42. Minutes of the A.L.B. Meeting held on 27th February, 1985.

43. Minutes of the A.L.B. Meeting held on 12th and 13th August, 1982.

44. Binns, B.O., Agricultural Credit for Small Farmers, (F.A.O., Rome, 1952), p. 2.

45. Minutes of the A.L.B. Meeting held on 6th September, 1973.

46. Minutes of the A.L.B. Meeting held on 4th May, 1978.

47. Minutes of the A.L.B. Meeting held on 27th October, 1982.

48. Minutes of the A.L.B. Meeting held on 9th April, 1981.

49. Minutes of the A.L.B. Meeting held on 6th September, 1973.

50. Minutes of the A.L.B. Meeting held on 27th February, 1985.

51. Minutes of the A.L.B. Meeting held on 9th April, 1981.

52. Minutes of the A.L.B. Meeting held on 16th August,

1979.

53. Minutes of the A.L.B. Meeting held on 21st July, 1977.

54. S.17(2).

55. Minutes of the A.L.B. Meeting held on 6th September, 1973.

56. Minutes of the A.L.B. Meeting held on 20th September, 1984.

57. Footnote 55.

58. A more definite policy is contained in the Land (Conversion of Titles) (Amendment No. 2) Act, 1985 in which the circumstances in which the President may alienate land to non-Zambians have been spelt out.

59. Minutes of the A.L.B. Meeting held on 28th May 1981.

60. Minutes of the A.L.B. Meeting held on 12th and 13th August, 1982.

61. Minutes of the A.L.B. Meeting held on 24th February, 1982.

62. Minutes of the A.L.B. Meeting held on 10th February, 1983.

63. Cap 287 of the Laws of Zambia, s.79. It is up to any intending purchaser or vendor to bring an action against the caveator to show cause why the caveat should not be removed.

64. Even after 1973, there was a measure of flexibility but these instances where persons or companies were permitted to own more than one farm were dealt with as exceptions rather than the rule.

65. Memorandum dated 16th August, 1973 from the Minister to the Acting Permanent Secretary for Lands, ref: M.L.N.R. 103/33/2.

66. Minutes of the A.L.B. Meeting held on 6th September, 1973.

67. Minutes of the A.L.B. Meeting held on 21st July, 1977.

68. Minutes of the A.L.B. Meeting held on 16th August, 1979.

69. Minutes of the A.L.B. Meeting held on 12th and 13th August, 1982.

70. S.21.

71. Minutes of the A.L.B. Meeting held on 24th March, 1977.

72. Minutes of the A.L.B. Meeting held on 8th November, 1979.

73. Minutes of the A.L.B. Meeting held on 31st December, 1979.

74. Minutes of the A.L.B. Meeting held on 12th and 13th August, 1982.

75. Interview with the Deputy Commissioner of Lands, 10th April, 1985, Mulungushi House, Lusaka.

76. Ibid.

77. Ibid.

78. Ibid.

79. No. 2 of 1970.

80. S.I. No. 1652 (British).

81. S.72.

82. See the contribution of Mr. S. Kapwepwe, Zambia Daily Parliamentary Debates, 2nd to 18th December, 1969.

83. James, R.W., "Mulungushi Land Reform Proposals: Zambia", East Africa Law Review, 1975, 2, 4, 109.

84. Kaunda, K.D., Zambia's Economic Revolution, (Zambia Information Services, Government Printer, Lusaka, 1968), p. 47.

85. S.3. By way of summary, public purposes meant government projects such as railways, dams, hospitals, schools, etc., but did not include alienation to private individuals.

86. Wina, S., Why the Referendum? (Government Printer, Lusaka, 1969), p. 2.

87. Ibid.

88. Constitution (Amendment) (No. 3) Act, No. 10 of 1969, section 2.

89. Now Article 18 of the Constitution of Zambia Act, No. 27 of 1973.

90. Constitution (Amendment) (No. 5) Act, No. 33 of 1969, section 4.

91. Act No. 2 of 1970.

92. In the National Assembly, the Minister for Lands and Natural Resources, Mr. S. Kalulu declared "We will spare no time in making sure that the teeth of the Act are put to use ... It is evil to live in a country where parcels of land are possessed by absentee

landlords living like dogs in a manger ... the sooner this exercise was done the better": Hansard, 25th February, 1970.

93. [1972] Zambia Law Reports, p. 204. The case concerned the appointment by the President of a Commission of Inquiry, if in his opinion, such appointment was for the public welfare under the Inquiries Act, No. 45 of 1967.

94. Ibid., at p. 209.

95. Minute dated 18th November, 1974 from the Commissioner of Lands to the Permanent Secretary, Lands Department, File ref: L/MISC/819.

96. S.5(1).

97. S.5(2).

98. S.7(4).

99. S.6(1).

100. S.17.

101. S.19(1).

102. S.19(2).

103. S.20.

104. S.12.

105. "Absentee owner" is defined in section 16 as the owner of any estate or interest in, or right over land or other property -
   a) in the case of an individual, a person who is not ordinarily resident in Zambia;
   b) in the case of a partnership, a co-ownership or a body corporate, one in which the effective control lies, directly or indirectly, in the hands of individuals who are not ordinarily resident in Zambia.

106. "Unexhausted Improvements" under section 15(6) means "any quality permanently attached to the land directly resulting from the expenditure of capital or labour and increasing the productive capacity, utility or amenity thereof, but does not include the results of ordinary cultivation other than standing crops and growing product."

107. S.15(4).

108. S.15(3).

109. Ibid.

110. S.11(4).

111. James, R.W., "Mulungushi Land Reform Proposals - Zambia".

112. Ibid., p. 126.

113. Mvunga, M.P., Land Law and Policy in Zambia, (PhD. Thesis, University of London, unpublished, 1977), p. 480.

114. Cabinet Office circulars No. 39 dated 16th July, 1971 and No. 29 dated 4th October 1974 addressed to all Permanent Secretaries state that for any acquisition of property for and on behalf of the government, for valuation purposes, experts should be called from the Valuation Department.

115. The problems of the Valuation Department have been exacerbated by the added responsibility under the Land (Conversion of Titles) Act which empowers the President to fix the sale price of properties prior to granting his consent.

116. S.5.

117. Address by His Excellency the President Dr. K.D. Kaunda to the National Council of the United National Independence Party, Mulungushi Hall, Lusaka, June 30 - July 3, 1975, (Government Printer, Lusaka, 1975), p. 45.

118. de Smith, S.A., Judicial Review of Administrative Action, (Stevens and Sons Ltd, London, 1973). On p. 253 he indicates the circumstances in which law courts may impugn the exercise of discretionary power by public officers saying: "Thus discretion may be improperly fettered because irrelevant considerations have been taken into account; and where an authority hands over its discretion to another body it acts ultra vires."

119. S.11(4).

120. For instance out of the twenty properties acquired in 1974, compensation was paid only in respect of one property. Of the thirty-six acquired in 1975 (twenty-four of which were farms) none was subject to compensation: Minute dated 12th January 1976 from Commissioner of Lands to Permanent Secretary, ref: L/MISC/819, Conf. For this reason, the Compensation Advisory Board established under s.21 of the Act has been, largely, redundant. Between the years 1977 and 1979, it only met once to consider two cases and forward its recommendations to the Minister. In 1980 and 1981 it met only once to consider two applications in each year: Annual Reports of the Compensation Advisory Board for the years 1977/78/79 and 1980, (Government Printer, Lusaka), 1981; and Annual Report for the Year 1981, (Government Printer, Lusaka), 1983.

121. Act No. 20 of 1975.

122. The Cabinet Land Policy Committee consisted of the Ministers of Lands and Natural Resources (Chairman); Finance; Agriculture; Commerce and Industry; Justice; Local Government and Housing; and the Attorney-General.

123. The Land Commission consisted of Mr Arthur Johnson (Chairman); the Commissioner of Lands, Mr S.G.A Burlock (up to 19/6/66) and thereafter Mr. J.L. Kazoka; the Local Courts Adviser, Mr. C.M.N. White; and the Research Officer, Customary Law, Mr. W.T. McClain.

124. James, R.W., "Mulungushi Land Reform Proposals: Zambia", op. cit., p. 127, footnote No. 67.

125. Report of the Land Commission, 1967, (Government Printer, Lusaka, 1967), p. 14.

126. James, R.W., "Mulungushi Land Reform Proposals: Zambia", op. cit., p. 127.

127. Ibid.

128. No. 64 of 1970.

129. Permanent Secretary, Ministry of Lands and Natural Resources, to Minister, Draft of Address to Cabinet, ref: 372/1, file No. LA/11,204/1.

130. Ibid.

131. Minute dated 19th May, 1970 from Acting Commissioner of Lands to the Minister of Lands, file ref: LA/11,204/1.

132. Minute dated 17th March, 1971, from the Minister for Lands and Natural Resources to Commissioner of Lands, file ref: M.L.N.R./12/3/4.

133. No. 20 of 1975.

134. Kaunda, K.D., Zambia's Economic Revolution, op. cit. The Cabinet Office version is entitled, Zambia: Towards Economic Independence, (Government Printer, Lusaka), 1968.

135. Ibid., pp.9-19.

136. James, R.W., "Mulungushi Land Reform Proposals: Zambia", op. cit., p. 109.

137. Kaunda, K.D., Take up the Challenge, (Zambia Information Service, Government Printer, Lusaka, 1971), pp. 46-47.

138. Ibid.

139. On the other hand, it is possible that definite policies would have accelerated the loss of these farmers: "It is, therefore, quite possible that a policy of masterly inactivity was the best solution", Dixon, C.L., The Development of Agricultural Policy in Zambia, 1964-1971, (University of Aberdeen, Department of Geography, O'Dell, Memorial Memograph, No. 15, 1977), p. 30.

140. Kaunda, K.D., Humanism in Zambia and a Guide to its Implementation, Part 1, op. cit..

141. Ibid., p. 14.

142. Ibid.

143. Ibid.

144. Meek, C.K., op. cit.

145. Kaunda, K.D., Towards Complete Independence, (Zambia Information Service, Government Printer, Lusaka, 1969), p. 40.

146. Ibid., pp. 40-41.

147. Kaunda, K.D., The 'Watershed Speech', (Zambia Information Service, Government Printer, Lusaka, 1975).

148. Ibid., p. 43.

149. Ibid., p. 44.

150. Ibid., p. 45.

151. For Parliamentary discussion see Daily Parliamentary Debates, Tuesday, 12th August 1975.

152. James, R.W., "Mulungushi Land Reform Proposals: Zambia", op. cit., p. 131.

153. Zambia Information Services, Take up the Challenge, op. cit., p. 54.

154. These are the Agricultural Finance Company and the Zambia Agricultural Development Bank whose business is discussed in Chapter Four.

155. S.7.

156. S.18.

157. S.3.

158. Megarry, R.E. and Wade, H.W.R., The Law of Real Property, (Stevens and Sons Ltd, London, 1984), p. 732.

159. This statute constitutes part of the "received law"

having been enacted prior to 1911, see Chapter One.

160. Law Development Commission, Report on the Land (Conversion of Titles) Act, No. 20 of 1975, (Lusaka, August, 1981), p. 95.

161. Ibid., p. 99.

162. Republic of Zambia, Daily Parliamentary Debates, No. 39i, Tuesday, 12th August, 1975, p. 505.

163. Report on the Land (Conversion of Titles) Act, op. cit., p. 8. Its proposed draft amendment bill would add after "or land" the words "and charges for services actually provided and other expenses actually incurred", to cover survey fees on subdivision.

164. [1983], Zambia Law Reports, p. 40.

165. Ibid., p. 44.

166. There was, of course, the additional reason that the plaintiffs had been in arrear and, therefore, had not come to court for an equitable remedy "with clean hands".

167. S.13(2).

168. Report on the Land (Conversion of Titles) Act, op. cit., p. 61.

169. Ibid.

170. Minute dated 1st June, 1976 from the Minister to the Permanent Secretary, ref: M.L.N.R./T.J./103/28/2. Conf.

171. Ibid.

172. Minutes of the 28th Meeting of the Lands Disposition Advisory Committee held on the 24th of May, 1976.

173. In an application by Woolcott Hotels Ltd, for consent to assign to Anaconda Investments Ltd, the proposed price, approved by the Advisory Committee was K150,000, but the Minister reduced the price to K83,000. In the case of the application of Bancroft Pharmaceuticals Ltd for consent to assign to Z.O.K. Ltd for K140,000, the Minister reduced the figure to K100,000. No reasons were given: Minutes of the 28th Meeting of the Lands Disposition Advisory Committee, op. cit.

174. The Law Development Commission's recommendation is that in the contract for sale of movable and immovable property, there should be separate indications of the price of movables and the price for immovables. See Report on the Land (Conversion of Titles) Act, op. cit., p. 68.

175. Minutes of the A.L.B. Meeting held on 12th and 13th August, 1982.

176. Minutes of the A.L.B. Meeting held on 27th October, 1982.

177. Interview with the Deputy Commissioner of Lands, 10th April, 1985.

178. Report on the Land (Conversion of Titles) Act, op. cit., p. 63.

179. Ibid.

180. See Editorial Comment in the Zambia Law Association Journal, 1977.

181. Report on the Land (Conversion of Titles) Act, op. cit., p. 64.

182. Ibid., p. 6.

183. Cap 287 of the Laws of Zambia. The documents required to be registered under this Act are those transferring land or creating a charge or mortgage on land or a lease for a period in excess of one year.

184. Memorandum on Land Administration dated 28th January, 1983, Lands Department, file ref: L.A./11,001/Vol. II, folio No. 300.

185. Bruce, J.W. and Dorner, P.P., Agricultural Land Tenure in Zambia: Perspectives, Problems and Opportunities, A Research Paper, No. 76, (Land Tenure Centre, Madison, October, 1982), p. 20.

186. Ibid., p. 21.

187. Report on the Land (Conversion of Titles) Act, No. 20 of 1975, op. cit., p. 1.

188. Ministry of Lands and Natural Resources, Procedure on Land Alienation, LAND CIRCULAR NO. 1 of 1985, (Government Printer, Lusaka, 1985), p. 1.

189. Ibid., p. 2.

190. Report on the Land (Conversion of Titles) Act, op. cit., p. 72.

191. Kaunda, K.D., Take Up the Challenge, op. cit., 53.

192. Quoted in a Minute dated 22nd March, 1983 from the Commissioner of Lands to the Director of Agriculture: ref: L.A./11,001/Vol. II.

193. Ibid.

194. The discussion of the effect this policy may have is contained in Chapter Three, although it may be pointed

out at this stage that if the figure of 250 hectares is adopted for State Land there would appear to be no reason for complaint. Moreover, this policy does not affect those who have already established large estates and are free from interference as long as the land is being utilised.

195. The Land (Conversion of Titles) Regulations, 1975. S.I. No. 187 of 1975.

196. Ibid., Part III of the First Schedule.

197. No. 15 of 1985.

198. No. 5 of 1985.

199. No. 18 of 1977.

200. S.13A(2) of the Land (Conversion of Titles) (Amendment No. 2) Act, No. 15 of 1985. The expression non-Zambian has been defined as (a) in the case of an individual, a person who is not a citizen of Zambia; (b) in any other case, a person who does not qualify as a Zambian in accordance with regulations made by the President by statutory order.

201. "The Land Act: Does it go far?", Sunday Times of Zambia, 11th of August, 1985.

CHAPTER THREE

LAND LAW AND THE AGRICULTURAL DEVELOPMENT OF THE RESERVES AND TRUST LAND

A. INTRODUCTION

1. General

The origin of the Reserves and Trust Land has been described in Chapter One. Between them (but excluding Protected Forest Areas and Forest Reserves), they occupy nearly, seventy-one per cent of the total surface area of the country[1], and support almost sixty per cent of the population. The fact that the majority of the people derive their livelihood from land in the Reserves and Trust Land makes these areas the crucial target for any broad-based development policy. The primary goal must not only be to enable the rural population to be self-sufficient in food production, but also to enhance its full participation in the cash economy. This will not only provide a better standard of living for the rural poor, but will also attract the urban unemployed, whose manpower is required to provide a further boost to the rural economy.[2] That the government is aware of the need to encourage agriculture at grass-roots level is evident from the President's policy statement of 1968. Addressing the UNIP National Council at Mulungushi, he said:

> "I have stated over and over again that the basis of our rural development must start at village level with the, approximately, 450,000 small family farms in existence."[3]

While accepting the indispensability to the country of the commercial farmers, the President decided, nevertheless, that the emphasis must "rest with those thousands of farm units which we must help to emerge from a strict subsistence level into a living relationship with the rest of our cash economy".[4]

As land is one of the primary factors of production in any national economy "the whole land tenure system must be geared to provide those securities needed to encourage investments to improve the land required by a modern agriculture".[5] The President warned, however, that a rigid system of private ownership must be avoided. The President, therefore, had in mind the evolution of a land tenure system, short of a freehold system, but conducive to the use of land for the mobilisation of development capital. In his address to the UNIP National Council in 1970, he explained the danger in private ownership of land as the possibility that those who are in an advantageous position, financially, may accumulate too much land.[6] But land accumulation may not only result from private ownership. It may also result from the "rights of usage over vast acres of land by individuals under customary law".[7] Nothing, however, has been done to evolve a land tenure system that will encourage investment and prevent land accumulation in the Reserves and Trust Land. As pointed out in Chapter Two, the land tenure reforms of 1975 have little practical relevance in the Reserves and Trust Land, consequently, the only tenure systems existing in these two categories of land which may be seen to provide security are leases and occupancy

licences respectively. The said leases and occupancy licences are granted under the archaic Reserves and Trust Land Orders prescribing the exceptional circumstances in which non-Africans could enjoy rights in the Reserves or Trust Land.

By far the majority of people in the Reserves and Trust Land hold land under customary law,[8] hence, for purposes of brevity, these two categories of land are, hereafter, referred to as "customary land". This chapter which opens with a brief discussion of conceptual problems, concentrates on the nature of customary land rights in Zambia. These rights are evaluated in the context of the many features which have been said to retard agricultural development. Attention is also focussed on non-customary tenure which is increasingly becoming popular with emergent farmers.

2. The Problem of the Concept of Ownership

The problem of the application of property concepts developed under one system to another system of a different political and cultural background has taxed many students of African customary land tenure. Bohannan expresses this point succinctly when he observes:

> "It is probable that no single topic concerning Africa has produced so large a poor literature. We are still abysmally ignorant of African land practices. That ignorance derives less from want of 'facts' than that we do not know what to do with 'facts' or how to interpret them. The reason for this state of affairs is close at hand: there exists no good analysis of the concepts habitually used in land tenure studies, and certainly no detailed

> critique of their applicability to cross-cultural study."[9]

The most difficult concept to apply has been "ownership". The confusion[10] which has arisen stems from the difficulty of defining it or indeed any other word. It has been pointed out that three approaches can be recognised in defining a given word: one approach is to regard the act of giving the meaning or defining a word as equivalent to naming, substituting or denoting a thing for which it stands - the "substitutional" or "notional" approach; the second approach is the "essentialist" approach, by which every class or group of things is ascribed an essential or fundamental nature which is common to every member of its class and the process of defining consists in isolating and identifying this common nature or intrinsic property; and the third method is by supplying the accompanying elucidation of the manner in which a word is to function in all the diverse contexts in which it may be used, the "contextual" approach.[11]

Each of these methods of defining a term has its own weaknesses. The "notional" approach assumes that every legal system, irrespective of its stage of development, has a notion of ownership, but it does not, in itself, indicate the contrast in the import of the word when used in a different cultural setting. Among the leading supporters of the notional approach would appear to be Bentsi-Enchill. He explains that variations in land tenure systems are variations on a common theme.[12] He further argues, "Tenure systems represent relations of men in society with respect to that essential and often scarce commodity, land.

Accordingly, although actual patterns differ from system to system, there are certain uniformities of type in the relations involved which make it possible to apply a common system of analysis to the different systems".[13] These arguments were made in an era in which similarities were emphasised to facilitate attempts to introduce European forms of tenure through adjudication and registration of title. Even prominent jurists such as Ollennu and Coker attempted to establish parallels between African lineage landholding systems and the English concept of co-ownership, joint tenancy and tenancy in common.

Much confusion, however, has arisen from the adoption of the "essentialist" approach. In the early colonial era administrators and scholars tried to fit the facts of African land relations into the English concepts of property law.[14] The idea of ownership was an important tool in the colonial process. Upon establishing a protectorate, it was the Crown's intention to partition land between the settlers and the indigenous community. The essentialist approach demonstrated that African forms of land tenure lacked some ingredients of a fee simple and this being the case African land rights were in the nature of an usufruct only, lasting only so long as the land was being used. The conclusions that emerged from this assumption were that, first, ownership, if it existed, lay elsewhere than in the tillers of the soil; and, second, that whatever land was not cultivated was vacant. It followed, therefore, that, as under English property theory, vacant or waste land was held by the Crown, the Crown could freely alienate it.[15]

Two grounds were offered to explain that customary land

rights could not amount to ownership. One was that land was regarded as a deity and therefore could not be owned. The other, that since customary land law did not recognise the sale of land, the holder could not be said to own what he could not sell.[16] Both of these reasons have been proved to be inadequate to justify the denial of the existence of ownership under customary law.[17] Neither does the sacred character of a thing prevent it from being capable of ownership. In any case, a distinction should be drawn between absolute ownership or radical title, and the ordinary ownership of land equivalent to a fee simple absolute in possession. Any reference by a community to ownership of land by God, "must necessarily be interpreted as a statement on the question of radical title and not ordinary human ownership".[18] That there is no ownership because there is no sale of land is misleading because the absence of land sales may mean only that land has not acquired any economic value.

The essentialist approach has, by and large, proved unpopular because "it assumes that there is something wrong with a foreign legal institution which does not conform to English legal principle; it also assumes that a term such as 'ownership' has a god-given meaning, a 'true' or 'real' meaning; and finally it assumes that a thing called 'ownership' exists and can be discovered in a country's laws, just as one might discover diamonds in a river-bed".[19] It appears settled, therefore, that ownership, as a legal concept varies from one system to another and cannot be denied any legal system "by virtue alone that this system differs from more refined and established legal systems".[20]

Obi puts this point clearly when he says:

> "The truth is that every legal system allows to individuals and groups certain rights and interests in and over various forms of property. The quantum of these rights and interests varies with the nature of the subject ... Where the maximum bundle of rights and interests allowed by the law is in the hands of the same individual or body that person or body is said to own the subject matter in question."[21]

In this chapter, the approach adopted is a combination of the notional and contextual approaches. On the basis of the notional approach, it is taken for granted that there is "ownership" of land in traditional African land law, and the word "ownership" is used to mean the maximum rights a person or a body has over the land he or it holds subject only to limitations by laws made by the community or State. The contextual approach will be used for the purpose of describing the nature of ownership under customary law.[22]

B. CUSTOMARY LAND TENURE AND AGRICULTURAL DEVELOPMENT

1. The Nature of Customary Land Rights

Having defined ownership as the greatest interest permissible in a given legal system, the next step must be to identify the person or body in whom this interest is vested. Such an inquiry is not necessarily different from that advocated by some scholars who say that it is more

useful to approach the analysis of customary rights in terms of "who can do what", instead of "who owns land" or "where is ownership located",[23] after all, ownership also confers the right of control over one's land. The more useful approach, therefore, is to look at the information that a stranger seeking permission to settle in a given community would need. Such information can be elicited by questions such as "from whom do I get land?", "on what terms?" or "what can I do or not do with it?"[24]. In other words the questions relate to who owns what interest in what land. Here there is controversy among various scholars on the subject. Some tend to emphasise the ruler or the chief as the owner of land, others will point at the whole community, whether as a tribe or lineage group, and yet others will maintain that the individual occupier or the family as a corporate unit is the owner.

(a) Community versus Individual Landholding

Commenting on the Ngoni of Zambia, Gouldsbury and Sheane have written:

> "In theory the whole of the land belongs to the Paramount Chief, presumably by right of conquest. This ownership is not absolute and, in fact, it is safer to assert that the chief formerly held the land as it were in communal trust for the people ... He could induct his sons as landlords over large provinces which they administered and from which they collected their customary dues."[25]

This is echoed by Elias:

> "The chief is everywhere regarded as the symbol of the residuary, reversionary and ultimate ownership of all land held by a territorial community. He holds on behalf of the whole community in the capacity of caretaker or trustee only ..."[26]

Among those who emphasise the community interest is Yudelman, who states that land is held by the community as a collective unit, although eligible members have a vested right to use particular portions of the area and these individual rights to arable land are protected so long as the cultivator occupies the land or is presumed to have an interest in a particular holding.[27]

In spite of the conceptual problems raised by statements to the effect that land is owned by the whole community some scholars still continue making such propositions. Modern works are replete with statements such as "land tenure in sub-Saharan Africa can be characterised as a communal tenure of public ownership and private use rights of land"[28]; and "communal ownership of land by the tribe, the clan or the village, still very widespread in tropical Africa was fairly well suited to traditional cultivation in a situation of abundance of land"[29], or that "In East African customary law ... the systems of land tenure fall broadly into two main categories ... First communal or tribal tenure in which ownership is vested in the ruler as owner or trustee for the community."[30] In a more recent study of the Kunda of the Eastern Province of Zambia, Ngandwe says that by tradition, the entire tribal land belongs to the tribal community as a whole:

> "In principle the Chief allocates the land, but in practice, people settle themselves wherever land is available often without prior consultation with the Chief ... The Chief is the recognised custodian of tribal land, but he does not own the land."[31]

The proposition that African systems of landholding amount to communal tenure, is misleading as it implies that

"every tribesman has an equal right in every piece of the tribe's land".[32] The fact is that interests in land are communally based only in the sense that before one can have access to customary land, he must first secure the acceptance of the community of which he wishes to become a part. This community may be said to "own" land in the same way that nations may be said to "own" the lands or States in which they live. This explanation has a lot to commend it in that as Bentsi-Enchill argues, expressions such as "England", "Scotland", "Finland" etc. are no more than indications that the lands are "owned" by the English, the Scots and the Finns.[33] Likewise, in Africa, such expressions as Matabeleland, Mashonaland, and Barotseland, carry the same import, that the land belongs to the Matabele, Mashona and the Barotse, respectively. Members of these communities do not have equal rights to every part of the community's land, except in some cattle-owning communities such as the Tonga, Lozi and Mambwe, and only for purposes of grazing. Among these communities, all uncultivated land and garden land during the inter-crop period is available for use by any member of the community for the grazing of cattle. There are no definite pastures associated with one village rather than with another, as a result herds of cattle from various villages intermix.[34] After harvest, cattle may be released into open fields to feed on the maize stalk. An individual may not restrict the use of his field to his own stock, as the rest of the members of the village are entitled to graze their stock in his field. Inspite of this old customary rule fencing, to keep cattle off, has not been seriously challenged. In the

absence of such or other measure, any injury caused to livestock on account of any act of the owner of the field, for instance, digging a well in which a cow falls, is actionable.[35]

While there is no special area "reserved" as grazing land, a situation may arise in which some specific areas are used for grazing at different times of the year. If a person makes a field within the grazing area, he suffers no penalty except that he will have no redress in the event of damage to his crops by livestock. In the case of Matimba v. Kulumbwa,[36] the assessors were in agreement in declaring that where a person establishes a field in an area which has been used for grazing, it is up to the individual to take precautions to ensure that his crop is not destroyed by livestock.[37] There are two problems related to exercise of rights in grazing land which appear to be unresolved. One is that while members of the community may graze their cattle in one another's fields after harvest period, there seems to be no protection for those who may not have completely finished harvesting. As the determining factor appears to be the expiry of the time for harvesting, there have been occasions when people have suffered damage on account of the fact that others have released their cattle on to their fields before they have gathered and stored their produce. In the case of Mbewe v. Njakilwa and Another[38], the plaintiff sued the defendant owners of cattle which had consumed his maize crop on his farm. The defendants did not deny the damage but argued that as they were entitled to graze their cattle in the defendant's field after the harvest period and the defendant had failed to

complete the harvest in time or fence the field to keep away the cattle, the damage must be attributed to the defendant's negligence. The Magistrate dismissed the plaintiff's claim holding that as the plaintiff was aware of such custom as being in existence in the area, it was his duty to prevent damage being done to his property by cattle. This appears to be a rather odd decision which has no parallel with the customs of other cattle-owning communities. Among the Tonga, for instance, it is generally accepted that before cattle can be permitted to graze in another's maize field, the owners of the field must have completed harvesting. Any person who suffers loss on account of cattle being released too early is entitled to compensation. The important point to be made at this stage, however, is that it is only in respect of grazing or undeveloped land that communal rights may be said to exist.

By contrast other scholars do not see customary landholding as communal. Gluckman observed that the customary system of landholding consisted of a descending hierarchy of estates from the King to the occupier.[39] He explained that among the Lozi, the King granted, what he termed, "estates of holding" in arable land to homestead groups represented by their headman. These headmen are referred to as "primary holders" of the "primary estate holding". The headman, in turn, distributed land to his dependants, whom Gluckman termed "secondary holders", holding "secondary estates" from primary holders, and they, in turn, gave estates to tertiary holders etc. Later, Gluckman replaced the expression "estate of holding" with "estate of administration". The term administration was

used to cover the power of allocation of land, the power of control and regulation of its use, and the defence of land against trespassers.[40]

Had Gluckman confined his observations to the Lozi, he might have spared himself the plethora of criticism against his theory of a hierarchy of estates of administration. But he went on to say that such a hierarchy was to be found among the Bemba, who had a developed political organisation, and the Tonga who did not have a political organisation but lived under village headmen, and concluded:

> "Thus I would say that my framework of a hierarchy of estates of holding is likely to cover most systems of African land tenure. It will be least clear and of least importance in systems of shifting cultivation while land is plentiful. Its importance will grow as land becomes shorter or where in special circumstances cultivation becomes fixed. In hierarchically organized tribes like the Bemba, the gradation of estates will be woven into the social organization; in more undifferentiated organizations such as the Tonga, the gradation will not carry with it other social obligations."[41]

This doctrine of a hierarchy of estates was adopted by Watson, who, describing Mambwe landholding said that the Chief was the source of all Mambwe land rights. The Chief granted "estates of holding" to lesser chiefs, who, in turn, granted estates to village headmen within their chieftaincies, and the headmen allocated holdings to the members of their villages. In return each holder of an estate admitted the political authority of the superior from whom he derived his estate. Thus the series of estates of holding, he concluded, reflected the distribution of political authority within the tribal community.[42]

The existence of a hierarchy of estates as a general

phenomenon has been refuted by White, who carried out research into customary landholding throughout the country with the exception of the Western Province, then called Barotseland. Commenting on Tonga customary land tenure, White says:

> "Here we have no hierarchy of estates: The Tonga had no traditional authorities to allocate land in any case, and the Tonga headman of a village does not allocate land to his villages, and his only participation in the acquisition of land is to provide information as to whether or not existing rights are already enjoyed by an individual in a piece of land which another wishes to acquire."[43]

White maintains that the above situation was not restricted to the Tonga in respect of whom it might be accounted for on the basis that they lacked any unifying political structure. Even in communities with a central political authority such as the Ngoni, Bemba and Lungu, the position is the same as that which exists among the Tonga, the main difference being that in acephalous tribes, there is no conception of a tribal area occupying a territory, a conception which is present in a chiefly society. In his view, it is clear, therefore, that "although there may be a hierarchical political structure in such tribal areas, there is no corresponding hierarchy of estates in the form of descending allocations of land".[44] Emphasising the absence of any land allocating authorities, White argued that, although it was frequently stated that a chief allocated land to a village, what really happened was that when the villagers wished to establish their village on another site, they informed the chief, who, as political head, had to know who was within the jurisdiction. In order to prove the existence of a

hierarchy of estates, it was necessary, first, to show in a land tenure system, a defined land authority who assigned specific estates to estate holders below him, who, in turn, assigned land to subordinate estate holders; second, it was necessary to show the process working in reverse, with reversion of rights taking place.[45] He asserted: "In none of the areas studied during my surveys have I found this picture present. I do not consider that villages have a specific defined area of land available to them, forming the village estate".[46]

As far as Tonga landholding is concerned, White's observations are supported by Colson. Expounding the role of the village among the Tonga, Colson says that a man has a right to clear any unoccupied land, and that this system of landholding limits the position of the headman, since he has no right over land as a symbol of village unity.[47] No authority within the community has the right to allocate land.[48] It is only in a very limited sense that a headman can be said to have power to allocate land, and this is where individual rights to land have been abandoned on account of the village having moved to a new site so that it is no longer possible for the villagers to return to cultivate their fields. Unless they dispose of their fields before they leave, the headman may give the land to someone who comes to beg for it irrespective of whether the person in need is or is not resident in his own village.[49] Further evidence regarding the absence of land allocation lies in the mode of acquiring interests in customary land. This is dealt with more fully below, suffice it here to point out that rights in land are acquired by the actual clearing of

land for cultivation or signifying such intention by marking.[50]

The second aspect which must be proved to support the thesis of a hierarchy of estates is the incidence of reversion. The case of Mwiinda v. Gwaba[51] on Tonga customary law is noteworthy for the contradictory evidence adduced regarding reversion. In this case the plaintiff was claiming, inter alia, an injunction restraining the defendant, a headman, from continuing ploughing his land. In his defence, the headman argued that since the plaintiff had left the village of his own accord, the land automatically reverted to him and he was, therefore, entitled to allocate it to others or possess it himself. The court, finding abandonment not proved, granted the injunction sought, but on the fundamental issue of the reversionary interest, which the court did not address itself, the defendant's version was supported by one of the assessors called by the court. He said:

> "When a man moves from a village, the land he was ploughing or the land he was given to settle, that land remains the property of the headman. It is the headman who is going to be approached to allocate land."[52]

In contrast to the above testimony was the opinion of Chief Ufwenukwa who, although not called as a witness by the court but by the defendant, was treated as a person who had special knowledge of the relevant customary law. The Chief gave his opinion that "when a headman allocates land it is not his land as such to give ..."[53]. Of the two propositions of law it is suggested that Chief Ufwenukwa's version is to be preferred because the opinion of the assessor apparently makes no distinction between the

headman's control over land and the question of its ownership.[54] If the statement that the land remains the property of the headman means what it says, there is no doubt that it is not an accurate proposition of Tonga customary land tenure. Abandoned land, or land on which no individual rights have been established is part of the common pool of land awaiting exploitation by any who may wish to cultivate it, and does not fall into the village headman's or chief's estate. The ways by which one becomes a landholder under customary law seem to dispel the theory of a hierarchy of estates whereby traditional authorities are said to allocate land to individuals.

(b) Acquisition of Land

The ways by which one acquires land can be divided, broadly, into original acquisition and derivative acquisition. Original acquisition occurs when an individual takes up either, undeveloped or virgin land, or, unoccupied and abandoned land. The important feature pertaining to this mode of acquisition is that there is no reference to any traditional authority, except where there is doubt as to whether the land is actually abandoned. Derivative acquisition covers instances where land is transferred inter vivos or is inherited. These two modes of acquisition are common throughout the country, although the importance of one over the other differs from place to place depending on availability of land.

(i) Acquisition by Occupation

In some areas, it is still possible to find virgin land and all that is required to establish rights in such land is to clear the land in preparation for cultivation. Because of the labour involved, and the time it takes, it is sufficient if a person declares his intention to occupy a given area by marking the extent of land he wishes to clear so as to warn others off the area. This is common among all communities irrespective of whether they do or do not practice shifting cultivation.[55] Referring to the Ngoni, Gouldsbury and Sheane have written: "by cutting down a few boughs, or by various other signs each cultivator could bespeak a plot or unallotted land for himself" and, thereafter, by "cultivating it he acquired the right to till it, which was respected only so long as he continued to work it".[56] This statement, however, involves the authors in a contradiction as it implies that one can establish rights in land by occupation of unallotted land. Acquisition by occupation and acquisition by allocation (or allotment) are mutually exclusive. If it was the custom that individuals acquired rights in land by allotment, there would be no recognition of any rights to land of those who have merely cleared and occupied land - they would, in fact, be squatters. Consequently, it is submitted, they must have used the expression "unallotted land" to mean unoccupied land. Among the Bemba who practice the chitemene system of cultivation, early in the dry season, the area to be cleared is marked out by the individual by pollarding or marking the trees along the circumference of the area where cutting is intended.[57] Acquisition by occupation also applies among communities in the Luapula Province. Ian Cunnison explains

that a man is free to cultivate wherever it suits him so long as he does not interfere with other peoples' rights already established or cultivate on the land on to which another may be likely to extend his field.[58]

Acquisition by occupation, however, applies only to those who are members of a village community. Whoever is not a member of such community is not entitled to acquire land in such a manner without first seeking permission from the headman to settle in the village. In an appeal case from Chavuma Local Court to the Magistrates Court at Zambezi, the court was called upon to resolve the issue of residence where a club house was to be built in a headman's area without his prior permission. The magistrate's ruling was that such permission was necessary for a non-resident although such a grant of permission in no way implied that the headman owned the land. After due consultation with the assessor the magistrate is reported to have said:[59]

> "... Any new person wishing to build would properly ask the headman where he can do so ... Now I am satisfied that in this case the plaintiff/respondent is the headman of his village and that the place where the clubhouse was to be built is under his jurisdiction according to the custom, he being the headman. I do not though concede that the land concerned is the plaintiff's/respondent's own land whereby he has sovereign rights over it ..."

Having come to a finding that permission was neither sought nor secured, the magistrate proceeded to expound the headman's right to grant or withhold permission in the words:

> "I therefore consider that the plaintiff/respondent being a headman should first be requested if the clubhouse concerned can be built. I am quite satisfied on the evidence I have heard and with the evidence recorded by the lower court that such

> permission was not asked. I consider he rightly refuses now if he should so wish and that if those concerned in putting up of the building are not satisfied with his refusal they should appeal to the chief for his ruling ..."

The above exposition of the law is not only true of the Luvale, whose customary law was under consideration in the particular case but also equally true of the Tonga and Ngoni insofar as the headman's power to grant or withhold land to non-residents is concerned.

The requirement that strangers must seek the permission of the headman who will, thereafter, inform the chief as to his presence was not onerous in the early days because permission was not usually withheld. Undoubtedly, many things had to be considered and, in particular, the character of the stranger and the reasons for leaving his village, but, unless obviously undesirable, the chief was not likely to refuse him permission to settle because he would add to the numerical strength of the tribe.[60] With the present shortage of land in some areas, particularly in the Southern Province inhabited by the Tonga, it is not practical to admit many strangers and, in any event, acquisition by occupation is becoming rare. Scarcity of land has led some chiefs to abuse their authority. They have permitted the settlement of strangers on land with respect to which there are rights subsisting, in return for personal favours.[61]

(ii) Transfer of Land by Way of Gift

Customary land rights are essentially individual. Once a person has established his rights by occupation he is free

to transfer his rights to any member of the community without reference to any traditional authority. Individual land rights are, therefore, free from adverse claims by chiefs or headmen. Even Gluckman who proposed the theory of a hierarchy of estates conceded that the rights of the individual were absolute, and whenever the Lozi Paramount Chief wanted land he had to "beg" it from the owner.[62] Two issues that impinge on the title of the transferee are whether first, there is no restriction on the categories of people to whom land may be transferred, and secondly, whether the agreement of members of the family is a condition precedent to any such transfer. Coissoro has said of the Tonga, that gifts can be made freely, and such gifts are not restricted to those who are relations of the grantor.[63] Even strangers may be recipients of land so long as they have secured permission to settle in the area. It is the practice, however, to inform the headman and relatives of such a transfer so that they may bear testimony to the transfer.[64]

Among the Luvale of North-Western Province, there is a high incidence of transfers among relatives.[65] This might be seen as the result of their lineage system of landholding but such an explanation is not conclusive because similar patterns are discernible among both the Tonga and the Ngoni. The preponderance of transfers among relations might, therefore, be accounted for by reason of the composition of villages, rather than the system of landholding. Among the Ngoni, gifts of land are frequent but are not confined to relatives.[66] But according to Priestley and Greening, an individual Ngoni can only transfer land after securing the

consent of his patrilineally related senior kinsmen.[67] The implication being that land is not individually held but rather corporately held by the family group. This statement is, however, refuted by White who says:

> "My data do not support any such strongly developed association of a group of patrilineally related persons with the land rights possessed by them."[68]

It seems that owing to the "omnidirectional" kinship structure of contemporary Ngoni and their freedom of residence, it is unlikely that an individual has to secure the permission of his patrilineal kinsmen to dispose of his land.[69] These relatives may not live in the same village, as in the former times, and the agnatic structure of family organisation and residence has broken down. There is no doubt, therefore, that the individual Ngoni landholder "enjoys full rights of ownership, including the right of disposal, over his land and the land received as gift enters immediately into the ownership of the recipient ...".[70] The only consideration in cases of grants of land, if it can be so called, is the strengthening of social ties, for, the grantor is under no legal obligation to give, and the recipient under no legal obligation to accept the land.

(iii) Sale of Land

The question of whether or not there is sale of land under the various customary laws in Zambia or indeed other parts of Africa has led to a great deal of unnecessary controversy. On the one hand, there are those who argue either that sales of land do take place and are customarily sanctioned, or that although they do not take place, this is

not because customary law forbids land sales, but that in a situation of abundance of land, there would be no reason for anyone to pay for land. On the other hand, there are those who argue, that land sales are contrary to customary law and in the instances where land has been transferred for value, the price paid has been in respect of improvements on the land and not the land itself.

By far the majority opinion seems to be that customary law in Zambia does not permit the sale of land. Mvunga says that there has been no satisfactory analysis of what sale of land means under customary law. Denying the existence of sales of land he argues:

> "In all the areas toured under this investigation it is insisted and there is thorough unanimity in this, that land cannot be and is not sold. What is sold, however, are improvements on land such as permanent fixtures, i.e. buildings; not the land but the thing itself (the house), to be reimbursed for expenses incurred and labour employed. It is adamantly denied that the bricks, the roof material, the window frames and cement bought can by any stretch of imagination be regarded as part of the land."[71]

This view is also supported by many previous writers. Barnes says of the Ngoni that rights in land cannot be sold, but only given away, and that no presents are given to the grantor by the recipient of a garden or garden site.[72] This was corroborated by Priestley and Greening who in their survey noted "Land itself has no monetary value and cannot be bought, rented or sold nor may gifts take the place of a monetary transaction. Land or rights to land can only be given away."[73]

In an effort to dispel the purported existence of land sales among the Tonga, Conroy explained that the idea of

land purchase may have cropped up on account of the practice in early days when the movement of large communities was accompanied by the payment by such communities of a nominal tribute associated with the grant of land to such communities.[74] This, he says, has given rise to a fiction of land purchase and yet elsewhere, people have given gifts to be received into the community or to establish peaceful relations between the new community and the old. Summing up his research findings he said:

> "The idea of land purchase as we understand it is entirely foreign to Tonga thought and custom. All chiefs and councillors are emphatic that land sales do not occur and would not be tolerated. They all gave the same reply, that if such a case came to their notice they would fine the seller and order the return of the purchase money but, they say, no case has ever come before their courts. This was unwittingly confirmed by an Euro-African farmer in the Reserve who complained, somewhat bitterly, that he had been trying to purchase land from the Tonga for many years but that no one would sell."[75]

Since the early sixties, however, there has been a growing feeling that the assertion that land cannot be sold, but improvements can, is a mere disguise of the cash transactions that are taking place. William concedes that in South and Central Africa the sale of land has not developed to the extent that it has in many parts of East and West Africa, but, nevertheless, makes the observation that there is a tendency towards cash transactions in land.[76] He explains that in the maize-growing parts of the Southern and Central Provinces cash transactions in land have emerged in the form of payments for improvements, a development said to have commenced among the Tonga. Where the plough is used, land must be stumped at much greater

cost in wages for labour than in the case of normal hoe cultivation. Land cleared in this way, it is said, acquires a special value, assessed in money terms, which is independent of the scarcity or abundance of land in general. Payments are, therefore, being demanded for improvements, and not only among the Tonga, among whom there is scarcity of land, but also among the Soli and Sala who have just joined the cash economy who are not yet short of land. While the sale of improvements is not the sale of land in the normal sense, "yet for all practical purposes these transactions are sales of land, though in theory differences in productive capacity do not affect the price".[77] The value of cattle manure is concealed in inflated values of houses and other fixtures.

In the same way, White also perceived the selling of improvements as the genesis of land sales, because the transactions involve the transfer of land rights and value is paid for improvements, which, being in the nature of fixtures, cannot be removed.[78] White cites one case to illustrate his point. In the case cited, the relatives of a deceased farmer who lived in a different area declined to take over the land because none of them wished to leave where they were living. Logically, as none of the deceased relatives were prepared to take it up, it could be said to have been abandoned, and therefore, available for anybody who wished to take it. Another local resident showed interest in the land, but since improvements had been made to the land, the relatives demanded payment for the same. As the demand turned out to be a test case, it was referred to the Native Authority, which held that the relatives of

the deceased were entitled to receive value for the improvements. White also found a broader extent of land sales among the Luvale where, in thickly populated areas, high prices were being fetched for land. He concludes:

> "In societies where land rights are, in any case, transferable without reference to a land authority, provided residential requirements have been complied with, I do not believe that the change from transfer by gift to transfer for a consideration is such a revolutionary step as is sometimes supposed ... In the days of a cash economy, especially where land acquires a commercial value, it should seem perfectly natural that it should be transferred for a cash consideration since a new scale of economic values has been introduced."[79]

The propositions by William and White that the sale of improvements is a mere disguise for the sale of land, and further, in the case of White, that since improvements amount to fixtures which pass with land, transfers of such improvements amount to land sales should be perceived as misleading. Viewed from the English conception of land, everything attached to land with a view to its improvement is part of the land, but it is not clear that there is a corresponding principle under customary law. As Mvunga points out, it is a widely accepted principle in African land tenure that while the ownership of a tree may vest in one person, the land on which the tree stands may be in another.[80] In his discussion of the issue, the thrust of his argument is that under customary land tenure, improvements are regarded as separate from the land on which they are and hence the transfer of rights in these improvements do not involve the sale of land. Even in cases where the subject of contention is a building, as in the case cited, the court will treat the transaction more as a

contract to sell the buildings than to sell the land. Mvunga's conclusion is this:

> "Thus in respect of bare land, it can be stated with confidence that sales have not been recognised under customary law as an accepted method of transferring land rights. Economic pressures due to scarcity of land will no doubt be forthcoming, but as of now the impact of such pressures has not resulted in recognition of bare land as being a saleable commodity."[81]

My own investigation among the Tonga showed the same general picture that the Tonga are averse to any implication that land can be the subject of sale. The answer, even from local court justices, that "land cannot be sold" is almost dogmatic. Accompanying this denial is the usual qualification that improvements or developments on the land can be sold.[82]

In spite of the assertion that land cannot be sold, among the Luvale, an instance has been recorded where a court recognised a transfer of land in exchange for goods. In the case of Ndonji v. Makiki, cited by Mvunga[83], the plaintiff, a deceased's young brother, sued the defendant for consideration still owing in respect of the transfer of a cassava garden by the late brother to the defendant. The parties had agreed that the transfer of the garden would be in consideration for a bull, two blankets and a piece of cloth. The defendant defaulted after the transfer of the cassava garden. Upholding the plaintiff's claim, the local court ordered the defendant to pay a sum of money in lieu of the items of exchange for the garden. Although this is, in fact, nothing more than a sale of land for a consideration in kind, this case is denied recognition as being decisive on the point, for the reason, it is said, that it is at

variance with customary law.[84] This brings us back to the issue of land sales about which it is submitted that there is no conclusive proof that customary law forbids sales of land.

(iv) Acquisition by Marriage

Land can be acquired as an incident of marriage. In Zambia there are three such systems, virilocal, uxorilocal and bilateral. In a virilocal marriage, the wife moves to the village of the husband, whereas in an uxorilocal marriage, the husband moves to the wife's village where he may reside for some years and thereafter, return to his father's village. In a bilateral marriage the couple may live wherever they prefer. These systems of marriage have a bearing on the nature and extent of land rights enjoyed by wives (in a virilocal marriage) and husbands (in an uxorilocal marriage) or either of them (in a bilateral situation). The most notable communities where virilocal marriages are practised are the Tonga, the Ngoni, the Mambwe and the Luvale, while uxorilocal marriages are popular among the Bemba, the Lunda and some communities in the Central Province such as the Lala, Lamba, etc. The Lozi are unique in that they practise both uxorilocal and virilocal types of marriage, and are thus bilateral.

1) Virilocal Marriage and Landholding

Often a woman in this type of marriage will be cultivating the same field as her husband, who may have acquired the land in preparation for marriage or on marriage. In either event the field belongs to the husband

and the wife has a mere right of cultivation.[85] The husband who is duty bound to find a field for his wife or wives in a polygamous marriage, retains the right to determine how the land should be used, and he can alter the boundaries as he desires.[86] At any time he could deprive her of a portion of the land and give it to another wife or to his children.[87] The woman's rights to such land is, therefore, precarious. As Colson puts it:

> "On divorce or widowhood, a woman lost her right to use such land although she could remove the crop which she had tended. Women, therefore, felt little security of tenure in land allocated to them by their husbands."[88]

This appears to be in contrast to Conroy's observation that a woman retains rights to land after the death of her husband,[89] but he admits that the position of wives residing with their husbands is more complicated.[90] She, however, has certain claims to the produce from the land. On divorce the wife is entitled to half share of the produce unless she is responsible for the failure of the marriage, and where the produce is sold, half the sum realised, and this share becomes her absolute property.[91] Scudder says of the Tonga "In case of divorce, the land returns to the husband, though the wife retains rights over all crops which she is cultivating in the garden at the time of her divorce, or which have been stored in her granary".[92] There is a great deal of uncertainty regarding some of these rules due to local variations and the practical problem of differentiating customary law from popular practice in the absence of court decisions on the point.[93]

The general position described above seems to be common also among the Ngoni. The wife has a general interest in

the land belonging to the husband and on his death, she may be permitted to remain in the deceased's village irrespective of whether there are any children of the family.[94] The Mambwe appear to have gone a little further in that even on desertion, the wife loses the rights to use her husband's gardens.[95] Desertion was deemed to have taken place under the system of labour migration if the man failed to return after an absence of three to five years and did not communicate with his wife or her relations.[96]

It is not in all cases, however, that a wife, in a virilocal marriage, acquires land through the efforts of the husband. She may, like any man, acquire it on her own initiative, independently of the husband. In such circumstances, she has exclusive rights to such land and these rights are retained by her even after divorce or the death of the husband.[97]

2) Uxorilocal Marriage and Landholding

Among the uxorilocal communities are the Bemba, Lunda and the Lamba. In these communities, on marriage, the man joins his wife's village. In fact his obligations to the wife's matrikin commence long before the marriage takes place. Once the marriage negotiations are successful, the man will spend some days labouring in the gardens of his in-laws. Even after marriage has been solemnised, he will for some time depend on his in-laws for the provision of food until some cleared patch of land is given to him.[98] The man's residence in his wife's village may continue for so long as the marriage continues, but, after a few years, he is at liberty to take his wife to his own village.[99]

Land which is obtained by way of gift from the relations of the wife always remains the property of the wife and the husband's interest is only in the produce. If divorce occurs the husband is only entitled to his share of the produce, and on his death his successors have no claim to the land.[100] Thus a husband in an uxorilocal marriage suffers similar disabilities to a wife in a virilocal marriage.

In the Lozi community, which is bilateral, the rights of the spouse who is living away from his or her village are similar to the general effect of uxorilocal and virilocal marriage. Where the wife lives in the husband's village, the rights in land are vested in her husband, but she has equal rights in the crops produced from his piece of land. On divorce or the death of the husband, she is entitled to half the produce, and if she dies, her heir can claim her share against her husband's relatives. By contrast where the husband lives in his wife's village on account of marriage, he has no rights in the crops for "neither the land nor the labour" is his.[102]

(v) Acquisition by Inheritance

The rules of inheritance provide further evidence for the proposition that rights in land are vested in individual occupiers rather than in the community at large. Rules of inheritance are relevant for the reason that they may cause the parcellation of land which may, in turn, hamper agricultural development.

Customary law of inheritance is either matrilineal or patrilineal. Matrilineal inheritance is the system whereby

property rights are derived through the female line. Consequently a man's children have no right to his estate, but his mother, brothers, sisters, maternal uncles, matrilineal nephews and matrilineal nieces. Under the patrilineal system rights to property are traced through the male line with children taking priority over the man's parents, his brothers and sisters. Under both systems there appears to be no provision for the widow.

Among the matrilineal people in North-Western Province - the Luvale, Luchazi, Chokwe, Lunda and Ndembu, the principal heir is the nephew of the deceased.[103] The nephew succeeds to all the property. Where there are several nephews the matrilineal family of the deceased select the particular nephew to inherit. Children and the deceased's widow have no right to the estate or part thereof, although they may get some of the property at the discretion of the heir. In the absence of a nephew, a niece is chosen and in the absence of a niece, it will be one of the sisters or brothers. One aspect of importance is the discretion of the maternal relatives to choose the particular heir within the permitted category of relationships to the deceased. The Tonga appear to allow the utmost discretion to the maternal relatives referred to as basimukowa to elect the heir. Under Tonga custom, there is no automatic inheritance by any probable heir. The basic criteria are: i) nephews and brothers are preferred over any other relative of the deceased, ii) males are preferred over females, iii) a woman of exceptionally good character may be chosen where there are no available male candidates.[104] Failing nephews and brothers, grandchildren may inherit, and it is only in the

absence of grandchildren that sons may inherit.[105] In contrast, the Chewa of the Eastern Province have more definite rules. The order of inheritance is uncles, brothers, nephews, the sons and the father.[106]

The majority of patrilineal peoples are to be found mainly in the Northern and Eastern Province. In the Northern Province are the Mambwe, Namwanga and Lungu peoples, and in the Eastern Province, the Ngoni. Three months after the death of the deceased, the heir referred to among the Northern Province patrilineal peoples as impyani is selected by the patrilineal relatives of the deceased. The heir may be a son or a brother of the deceased. The Ngoni rules of inheritance are as follows: i) where all the sons of the deceased are of the same mother the estate goes to the eldest son; ii) where the deceased is survived by sons born of different wives the eldest son of the senior wife inherits; iii) failing the sons, it will be the eldest daughter, failing daughters, brothers and failing brothers, the eldest sister. If the deceased had no children and neither brothers nor sisters the father inherits and in his absence, the mother.[107] The heir inherits the estate of the deceased as his individual property to deal with as he prefers,[108] although he assumes the obligations of the deceased in relation to the dependants of the deceased and all those to whom the deceased stood in loco parentis.

The Lozi in the Western Province provide a variation of the patrilineal system. The principal heir, called shwana is chosen by the deceased's relatives a year after the death of the deceased. The heir is chosen from among the deceased's children - males taking preference over females.

In the absence of children the estate devolves on the deceased's parents. Brothers and sisters of the deceased can only inherit if the deceased had neither children nor parents surviving him. Like the widow, members of the extended family have no interest in the estate.

In its Report on the Law of Succession, the Law Development Commission pointed out that the above rules of inheritance worked well in typical traditional societies but in urban areas the clash of traditions arising from intermarriages, and the gradual decline of the extended family system made observance of these rules difficult. Consequently, the Law Development Commission argued, it was necessary to introduce reforms to the law of succession which would have the effect of making the children and the widows the beneficiaries of the deceased's estate. These proposals were made notwithstanding the expression of satisfaction with customary law by the majority of people in rural areas. The Law Development Commission's proposals are deficient in many respects[109] and run counter to customary law, for instance the idea that mothers should be trustees of their infant children. The Commission's proposals do not relate to inheritance. Even if the government was to effect the reforms called for, customary law will continue to apply in relation to land. The important point to be made is that in both matrilineal and patrilineal systems, land is inherited by a sole heir, be he a nephew or a son. Consequently rules of inheritance are not responsible for parcellation. Parcellation is the result usually of transfers inter vivos by a father to his children as they come of age, or marry.

(c) Current Trends in Customary Land Rights

The above discussion has shown that generally customary land rights are vested in individuals rather than communities. It may well be that this is, in fact, a change from communal rights to individual rights. An examination of existing literature on the customary law of various ethnic communities shows that earlier scholars tended to stress the power or authority of the chief who was said to be responsible for allocation of land. This may have been encouraged by chiefs who claimed to have proprietory interests in the land which they could transfer to minerals prospectors.[110] Modern works tend to emphasise the individual aspect of customary land rights[111] and explain the role of the chief as administrative rather than proprietory.

The continuity of rights in land depends on land use. Much of Zambia has poor leached sand veld and lateritic soils and the pattern of rainfall is rather unreliable.[112] This has resulted in the development of various systems of land use dominated by shifting cultivation. The length of the period a parcel of land is used is dependent on ecological factors. In much of the Central Province small patches are cultivated for two to three years and then left to regenerate. Among the Mambwe, who practise "advanced chitemene" land may be used for about eight years, while on certain parts of the Luapula valley, in the Luapula Province, the stronger soils permit cassava fields to be cultivated for three to four years with intervals of

fallowing. Where shifting cultivation is very pronounced, the rights in land are more of an ephemeral nature as they are transferred from one piece to another over a comparatively short time. Consequently, no one claims any rights in fallow land.

In most communities, however, there is a growing tendency towards permanent holding of land. Thus a man may leave his land fallow for two to three years without any one disputing his claim to its use. Even in his absence, so long as his next of kin show interest in it, there will be no interference. The rights of an individual over cleared land are so inviolable that "land would have to be exceedingly short before a Bemba would risk a quarrel on this account ...".[113] Similarly, among the Tonga, rights in fallow land are respected.[114] Conroy, however, brings out the question as to the length during which such rights may continue to be recognised. He states that there were some disagreements among Tonga traditional authorities regarding the length to which rights in fallow land may continue to be respected. Some chiefs maintained that however long the land was resting, no one could deprive the owner of the land until his death even though the land had degenerated into bush. Others argued that rights in resting land lapsed after five years at the most. My own investigation revealed that as a general rule, rights in fallow land continue during the life of the owner and can be inherited upon his death. To the question whether rights in fallow land continued after the land was overgrown and reverted into bush, a panel of local court officials in Choma district was in agreement in asserting that the village headman could

permit its use by somebody without land but only with the permission of the owners.[115] It is clear from this qualification that, to all intents and purposes, the individual's rights continue unless there is evidence to show abandonment. The version of the opposing chiefs, that rights lapse after a period of five years is an effort to adapt customary law to take into account growing population pressure on the land.

On the 13th of October 1980, the President appointed a Commission of Inquiry to investigate the shortage of land in the Southern Province and the methods which may be used to facilitate expeditious acquisition of unutilised or underutilised land and make such recommendations as the Commission felt appropriate.[116] The Commission's findings regarding Tonga customary land tenure support the view which confines the authority of the chief or headman to the regulatory role without any powers of granting land.[117] The regulatory power pertains to the granting or withholding of permission for strangers to settle in the area and ensuring that grazing land is used exclusively for grazing. The Commission, however, points out that even these regulatory functions are diminishing in importance on account of the pressure on available arable and grazing land. The Commission discovered "instances where through the chief's acquiescence or his lack of power to enforce, people are encroaching onto grazing areas, converting these areas for residential and crop cultivation purposes", and concluded that traditional authority over land use was being whittled away.[118] The pressure for change was also evidenced by submissions to the Commission that the Tonga concept of

Katongo, by which villagers, through their headman, Sikatongo, would claim to be entitled to land surrounding an old village site, was outdated and impracticable in modern Zambia.[119] The future trend would appear, among the Tonga, to be further diminution in the regulatory role of traditional authorities and a limitation on the length of the period during which rights in fallow land and claims to old village sites may develop.

The question whether or not customary law, under the influence of the cash economy has sanctioned land sales is a difficult one. There is no doubt that the introduction of a cash economy has had some effect on customary land practice.[120] Improvements to the land, if not the land itself, have acquired a cash value, and there is no doubt that sales of improvements on land do take place. Inspite of this development, however, it is persistently said that land cannot be sold under customary law. Hence Colson's remark that there is, among the Tonga, some ambivalence towards land sales - on the one hand they insist that land cannot be sold while on the other, they admit that sales do take place.[121] The difficulty in determining whether or not sales of land do take place arises, it is submitted, from the hypothetical nature of the question. From the literature which has a bearing on this question, it is apparent that in none of the cases cited to prove that a sale took place was virgin land the subject matter. All the cases cited in the matter of land sales by either White or Mvunga involved land which could, by village standards, be deemed to be developed. These cases are, therefore, inconclusive if they are meant to show either that sales of

land take place or that they do not. The argument that only improvements on land, and not the land itself are sold is equally suspect. It has been stated that land rights are established, originally by occupation which involves clearing. Clearing the land in preparation for planting adds value to the land and such value is equivalent to the cost of labour. But the point is that virgin land is not the subject of any individual rights which can be transferred to another by way of sale. Thus, when the question is posed whether or not undeveloped land can be sold the answer must be an unequivocal 'no' for the simple reason that no individual owns it, and a person cannot sell what he does not own. The failure to realise this factor has rendered much of the discussion sterile and academic. It is possible that in the situation of scarcity of land people will inflate the value of improvements on the land, when, in fact, what they want to sell is the land itself. It may be the case that improvements are being used as a disguise. It is, however, still the case that there is no recorded sale of undeveloped land. For the future it is unlikely that land sales will be encouraged because of the general prohibition under the Land (Conversion of Titles) Act, the implementation of which has so far been confined to State Land.

2. Customary Land Tenure and its Effect on Agriculture

As a relevant factor in the development of agriculture,

customary land tenure has been criticised not only by scholars, but also by local administrators and international aid agencies. It is important to look at the major criticisms and examine whether they are borne out by customary law in Zambia. The absence of confidence in customary land tenure as a tool for agricultural modernisation has been caused by (a) the nature of customary law in general, (b) the alleged absence of security of tenure, (c) alleged restrictions on alienation of land, (d) parcellation and (e) absence of control.

(a) The Nature of Customary Law

Customary law remains largely unwritten.[122] In the early sixties some attempts were made in East and Central Africa to compile customary laws into "Restatements" as guides to administrators.[123] These efforts met with difficulty owing to variations among tribal communities in the same country, and were later abandoned. No "restatement" of customary law in Zambia was undertaken. These attempts, however, did not provide an exhaustive list of rules of thumb, but broad generalisations which emphasised uniformity rather than local variations. Arising from the fact that customary law is unwritten is its uncertainty. It is not contended that written law is invariably certain, as the often conflicting interpretations of legislative provisions by courts negates absolute certainty in any case. But what is important is the fact that in the case of legislation the existence of the rules is not in question, and the task is one of determining the

scope within which they are to operate. The difficulty with customary law is that the very existence of a given proposition of law needs proof. For this purpose rules have been enacted for the ascertainment of customary law.[124]

Modern literature on customary law is replete with instances where the application of a particular rule of custom is, by no means, clear. The extent of rights in resting land (discussed above) provide one such instance. Another subject of uncertainty relates to rights in grazing land. In Matimba v. Kulumbwa[125] one assessor said:

> "There is no such place like a grazing area. There may be a place where the land is fertile and people may put fields on that land but there should be the herdsmen making sure that the cattle do not destroy the crops."[126]

To the question as to whose responsibility it would be to ensure that crops are not damaged by cattle where an individual opens a field in an area where cattle have been grazing for a number of years, the assessor's reply was, "the one who puts a field in a grazing area has to fence the field". In this apparent contradiction is evident the fact that there is uncertainty regarding, not only priority regarding land use, but also the rights of individuals who cultivate "grazing" land.

Uncertainty also surrounds the rights of women in virilocal marriages. Mvunga reveals that there was considerable objection by female members of the panel he interviewed, to the proposition that even if the wife cleared the land by herself, if the husband took part in the location of the site, the field belonged to him.[127] Female members wished to treat the land as self-acquired property to which they had exclusive rights. Although the

proposition may be seen as no more than "a gesture of male chauvinism",[128] the existence of controversy is indicative of uncertainty. Similarly, in my investigation, it was clear that, although the rules are supposed to be obvious to those governed by them there was disagreement among members of the panel, particularly between local court justices and the headman. The headman contended that the rights of a spouse who had moved to the village of the partner were at risk on the dissolution of the marriage. The Presiding Justice contended, however, that if that spouse had expended efforts in cultivating the land, the spouse could not be deprived of the land notwithstanding the dissolution of the marriage. It was, nonetheless, clear that the doubts in the minds of some members of the panel had not been dispelled and that they preferred not to pursue the argument on account of the relatively exalted position occupied by the Presiding Justice in the legal system.

Another problem with the nature of customary law has been the alleged inability of customary law to adapt to changing circumstances. In particular, some of the tenets enshrined in custom are not in keeping with present economic and demographic realities. One of these doctrines is that membership of a given community confers upon the person a right to have access to some portion of tribal land. Gluckman has written: "By virtue of membership in the nation or tribe every citizen is entitled to claim some land, whether it be from the King, or from such political unit as exists in the absence of chiefly authority".[129] This doctrine has its own advantages, the most notable being that its application has led to the absence, so far, of a

landless class,[130] but it is unrealistic in a situation of scarcity of land.

In addition, this doctrine has led to the perception of land as a free commodity, which, in turn, has the effect, allegedly, of discouraging greater productivity.[131] As the argument goes, the African views land as a fundamental factor in guaranteeing the African's hereditary right to exist in his preferred milieu, and such a relation to the land involves very little pressure for increased agricultural production and financial return through greater inputs of labour.[132] Land is seen as a means of providing security at a basic subsistence level rather than as a source of marketable surplus. In order to encourage surplus production, it is argued, the traditional concepts have to be changed and emphasis laid "on the most productive use of land rather than on a pattern of use geared to provide security at a low level of production".[133]

The conclusion that the absence of a "cost factor" discourages increased productivity requires further examination. It is based on the assumption that whoever incurs some expense in acquiring land will use it to recover his expenses. The experience with State Land in Zambia has, however, shown that notwithstanding the expenditure incurred in acquiring farms, some of the farms remain undeveloped and underutilised. There is also the danger that if funds are dissipated in acquiring land, there will be little left to invest in its development. In any event, the cost factor would not ensure the continued exploitation of the land once the cost had been recovered. Moreover, peasant farmers have continued to make a substantial contribution to marketed

produce, notwithstanding the fact that they have not had to purchase their maize fields.[134] Finally, the assumption that customary law cannot adapt to changing economic and social conditions is debatable. Current trends in customary land tenure indicate a movement towards the restriction of the powers of traditional authorities and rights in fallow land. The real issue is whether the pace at which customary law is adapting to the changing economic and social conditions is adequate bearing in mind the crying need for increased agricultural production. Where it is required that immediate reform is necessary to facilitate development, legislation may be passed to bring about any radical change in landholding. But the use of legislation to bring about change is not only a response to the deficiencies of customary law. The history of the development of the common law has shown the degree to which legislation has been used to break out of the strictures of judge-made law, and evolve new rights and institutions to achieve the desired goal.

(b) Absence of Security of Tenure

Uncertainty about the nature of customary land rights may cause the landholder to feel insecure. Another cause is what is loosely referred to as "communal" land tenure. Where land rights are communally based, an individual member of the community may be discouraged from spending money on its development because he is uncertain whether he will be allowed to enjoy the land to the exclusion of other members of the community.[135] Commenting on the customary land

tenure in mid-west Nigeria, Runowicz stated that rights in land, after the harvest, were less stable as the land returned to bush "in trust of the community".[136] The problem here appears to be the fact that customary land rights continue to be enjoyed only so long as the land is being used and lapse when the landholder ceases to use it. Runowicz found that in such a system, landholders were reluctant to use fertilizer and that farmers tried to avoid the loss of their land by establishing bogus plantations of rubber trees to give the impression that the land was still being cultivated.[137]

Commenting on the effect of communal ownership on agriculture, a report of the United Nations' Food and Agricultural Organization stated:

> "This sort of communal ownership, with individual possession limited to one crop rotation (and return of the plots to the common fund upon expiry of this period), has the fundamental disadvantage of not encouraging land improvements. As such improvement is often very expensive, the peasants will undertake it only if they have a guarantee that they will benefit personally from it. This implies the extension of their usufruct well beyond a few years."[138]

The same arguments have been used against corporate tenures whereby a family or lineage group holds rights in land as one corporate unit, even though individual members of the family or lineage group use separate plots for cultivation.[139]

The argument that customary land tenure inhibits agricultural development because it is communal is no longer tenable. Customary interests in land were for a considerably long time believed to be communal but more recent appraisal has emphasised the individual nature of

these rights. As far as Zambia is concerned the theory of communal ownership has not enjoyed any substantial support. Only on grazing land or unoccupied land can the members of the community have equal rights.

There are, however, two communities which have been associated with corporate landholding, namely the Luvale and the Lungu. In these ethnic communities land is said to belong to local matrilineages which constitute villages and resting land is identified with the village as its property, but not the individual.[140] But the essence of security of tenure is the assurance that the landholder will not be deprived of his land so long as it is being cultivated, or if not, it is resting. One may, therefore, agree with Benneh that since an:

> "individual's right to cultivate an area which he has claimed for himself is never taken away from him under the corporate tenure system, farmers have the necessary incentive to invest in their acquired tracts of land"[141].

It is only in cases where periodical redistribution of land is practised that the cultivator may be discouraged from planting permanent crops[142], but in none of the Zambian communities is this the case. The recognition of rights to fallow land disproves the existence of periodical redistribution of land. Denying the absence of security of tenure among the Kunda in Chief Jumbe's area in the Eastern Province, Ngandwe states that although individual rights under customary land tenure are subject to limitations such as that land cannot be sold, there is sufficient security of tenure to encourage investment.[143] He reveals that all the twelve "emergent" farmers he interviewed stated that their investment in land were limited only by their "humble

resources and definitely not by want of security of tenure".[144]

The proposition that there is security of tenure under customary law is, however, subject to two qualifications namely the rights of spouses in virilocal and uxorilocal marriages, as the case may be, and the rights of "strangers" to the community. It has been shown above that the rights of spouses under the two systems of marriage are recognised only during the existence of the marriage. Due to the high incidence of divorce in some communities, there is no security of tenure as regards the immigrant spouse, and consequently, little incentive to grow anything other than annual crops or take measures to conserve soil fertility, let alone plant fruit trees. As Mitchell observed among the Yao of Malawi, the men have no interest in long range agricultural plans in the village of their wives.[145] He went on to explain:

> "If he invests capital, it is in moveable goods; if he builds a substantial house, it is in his matrilineage village. It is significant that when I gave some men avocado pear seedlings and told them that they took seven years to bear, not one planted the seedlings in the villages at which he was married. All planted them at their matrilineage villages."[146]

The normal trend which is becoming increasingly popular,[147] is for a husband to serve a few years usually between two to three years and then return to his village where his rights are more secure, but those of his wife are, correspondingly, less secure. Unlike a husband, however, the wife cannot insist that the family moves to her village where her rights are, comparatively, secure.

Naturally, the impact on agricultural development of

the fact that women have little incentive to invest in land must be seen in the totality of their economic standing in the traditional sector. There is no denying the fact that they have the right to hold private property and some have substantial private wealth for instance, in terms of livestock, but since they have little security in the villages of their husbands, their livestock, invariably, remains in their own villages where they have little opportunity to see that it is being properly looked after. But for the majority of women, the husband is still the breadwinner, so much so that they have little resources to spare which they can invest in land even given security of tenure. Nevertheless, as the opportunities for women to earn independent income increases both in urban areas and in villages (through the sale of agricultural produce), and the access to credit from banks improve, it will be necessary to confer security of tenure on wives in virilocal marriages. The incentive arising from their feeling secure will enable them to invest in long term projects in the villages of their husbands, where they can have personal control and develop managerial ability to get into commercial agriculture.

The other qualification to the theory that customary land tenure does confer security of tenure relates to the land rights of 'strangers' to the community. Earlier on, it was stated that entitlement to community land was dependent on the individual being a member of the community, and that a stranger should approach the headman of a village or chief, as the case may be, to be admitted as a member of the village or the tribal community. Upon the chief or village

headman accepting the stranger, the latter acquires the same rights as other members to land in the tribal area. In theory, the stranger enjoys the same degree of security as other members that the relevant customary law offers. In times of abundance of land, and, so long as the numbers of such strangers are few, these strangers are openly welcomed, and there is no conflict with the local population. In the event of land shortage, however, the immigration of a large number of strangers may create anxiety in the local population which may lead to the erosion of the security enjoyed by strangers. Such settlements of strangers were established during the period of the Federation of Rhodesia and Nyasaland due to the absence of restrictions on movement among the Federal States. The majority of these people who came mainly from S. Rhodesia, settled in Lusaka rural, but there were also large settlements in Kabwe rural, in the Central Province. A 1969 census revealed that there were in excess of 8000 settlers in Lusaka rural and more than 7,300, in Kabwe.[148]

Research undertaken by Mutsau shows that all these strangers sought and secured permission to settle in the areas in the normal manner. But as their number increased, they began to maintain their cultural identity, a development which gave the impression of aloofness to the local Lenje population. In the course of 1963 the relationship between the settlers and the local population became so strained that suggestions were made to the chief that they should be expelled.[149] Central government intervention, however, has helped diffuse the tension, but the lesson to be learnt is that security of tenure is also

dependent on acceptance by the local community. Mutsau reports that on account of insecurity, there was a desire among the younger settlers to leave the area and seek employment in the urban areas or to leave the country altogether.[150]

It may well be argued that the absence of foreign settlers need not hinder agricultural development as there is a comparatively larger indigenous rural population in the country, but the worrisome fact remains that the experience of settlers in Kabwe rural is not unique. The same experience has been suffered by Zambians who are "strangers" in the sense that they belong to other ethnic groups. Local languages have developed derogatory expressions such as mushamashi, in Lenje, and munyukunyuku, in Lozi to refer to strangers generally. The colonial government did little in its land policy to erase the perception of land as being held by the tribe when under the policy of native reserves it alienated reserves to natives "as tribes or portions of tribes". It created the impression that a reserve belonged, exclusively, to the tribe to which it had been granted, and to no other tribe or member of another tribe. The result has been the restriction of free settlement on other land, of those who, although they have the capital and managerial ability to cultivate a large farm, are unable to do so owing to scarcity of land in their communities. In terms of affording security to the stranger, government legislation may not immediately change the attitude of the local population, but it may give legal remedies and establish a code of conduct by which the interests of both the local population and the strangers are regulated.

(c) Absence of Title Deeds, Restriction on Dealings and Capital Formation

The Land Commission of 1982 reported that many witnesses expressed deep regret about the lack of title deeds in the Reserves and Trust Land areas which, in their view, prevented them from using land as security for loans from financial institutions.[151] The absence of title deeds is not the only factor. It is also alleged that restrictions imposed by customary land tenure on dealings, particularly, prohibition against the sale of undeveloped land, inhibits the use of customary land as security. Further, these two factors by preventing the free transfer of land inhibit the creation of a market for land which would ensure that land with agricultural potential is more productively used.

If land is to be used more in line with its potential, argues Yudelman, it must be seen merely as one of the factors of production and a basis established for distinguishing the economic value of different pieces of land.[152] Land has, therefore, to be negotiable with its price regulated by ordinary market forces of supply and demand so as to place a value on land according to its potential. In the circumstances, an efficient market for land would bring about a circular action: "better land would be higher priced because it would produce more, but because it was high priced, there would be pressure to use it to yield higher returns, and so better land would have to be put to more productive use than poorer land".[153] This chain

of reaction would, he says, have the effect of shifting emphasis from subsistence production to specialisation of production and, ultimately, commercialisation of agriculture. It is also argued that the absence of marketability of land prevents "progressive" farmers from consolidating fragmented parcels or acquiring larger holdings, while "innovative outsiders who might come in and make land more productive than locals are also blocked".[154]

These arguments are of doubtful validity, however. Freedom of transfer of land and the high cost of the land that such freedom might entail did not prevent speculation on State Land. It is conceivable, nonetheless, that the non-marketability of land has prevented easy access to land by other ethnic communities.

The second part of the argument is that "owing to the customary rule that land cannot be sold ... it plays no role in capital mobilisation".[155] Mortgages of State Land are common but their operation is restricted to the unexhausted improvements.[156] Mortgages of undeveloped land, therefore, cannot be made. This factor is very important in considering the importance of land as security for loans in the Reserves and Trust Land. Since unimproved land cannot be mortgaged, it is the value of the improvements that will determine how much can be loaned. In many rural areas, the value of improvements is so low that it is doubtful that much can be loaned on their security. There is also the question of the demand for rural land. Whether or not a financial institution which has lent money on the security of land will recover the full amount when it realises its security depends on the demand for that particular land.

Where there is land shortage such as in the Southern and Eastern Provinces disposing of land by way of sale is bound to be easier than where land is plentiful. There is no question, however, that a number of farmers, particularly, the emergent farmers, who have made valuable improvements on their land would benefit from mortgages of customary land. There is also an increasing number of urban workers who, on retirement, wish to settle on customary land.

In terms of customary land tenure in Zambia the above discussion has shown that apart from the Ngoni with regard to whom land sales together with improvements do not take place, elsewhere, such sales are recognised. Theoretically, therefore, a mortgage of customary land is possible. Whether or not banks can be persuaded to accept customary land as security and the desirability of permitting villagers to use land in this way is discussed elsewhere[157]; it is, however, pertinent to point out at this stage that the requirement of residence may pose a problem. Rights in customary land are acquired by residence in a particular community and even when customary law permits the sale of improvements on land, the transferee, if he is not a resident must, prior to acquisition, secure permission to settle in a given area from the chief or headman, as the case may be. The requirement that "strangers" must first secure the permission of the traditional authority, if they wish to acquire an interest in land, and since a mortgage is a transfer of such an interest in land, means that financial institutions would have to secure permission from traditional authorities if they wish to lend on the security of land within the chief's area. Moreover, in the event of

the villager failing to repay the loan, the requirement of permission would seriously restrict the number of possible purchasers to whom the bank could dispose of the land and realise its security.

(d) Parcellation and Fragmentation

A further criticism of customary land holding is that it leads to the parcellation of land.[159] The two causes of parcellation in customary landholding are, allegedly the right of every member to a share of tribal land, and the customary rules of inheritance. In his evaluation of customary land tenure in the context of agricultural development, Podedworny made the following remark:

> "One of the basic principles of the traditional system of land tenure is the right of every member of a given community to the land irrespective of how long one remained away from his permanent - that is - tribal place of living. This constitutes one more source of conflicts and a factor leading to an ever greater fragmentation of holdings."[160]

Although Podedworny uses the expression "fragmentation" what he actually means is parcellation, at least, in the context of the definition adopted. There is no doubt that every traditional ruler feels compelled to find some land for every one of his subjects. In the face of land shortage, however, this entails a limitation to the period during which one may enjoy rights in resting land. Rules of inheritance may contribute to the parcellation of farm land if they entail the division of the deceased's land into several small portions to several heirs. The danger of parcellation is that it may result in the resulting pieces

of land being too small to sustain a family even with the use of expensive implements. At present, there appears to be little evidence of the effect of parcellation. In the whole of the Southern Province, where, owing to scarcity of land, the effects of parcellation would be more pronounced, no such complaint was ever made to the 1982 Land Commission.

What has been perceived as common throughout the country is what may be termed as fragmentation, the ownership of several scattered portions of farm land as opposed to a consolidated unit. The problem with fragmentation is that the farmer's time is divided between travelling from his village to these scattered portions and cultivation. Goddard takes a much broader perspective when he states:

> "If the farm is scattered in a number of separate fields, a large percentage of the total working hours may be wasted in travelling between the compound and the various fields. Excessively small fields may be neglected. Land improvement and conservation measures may be hampered because of the need for co-operation amongst neighbours, while small fields may prevent the introduction of machinery to increase efficiency."[161]

It is practically difficult to assess the actual time spent on travelling to distant fields due to variations in terms of numbers of fields, distance between villages and farms and individual ability. In an attempt to apportion the working hours of women in a Bemba village in the Northern Province, Stromgaard found that "no less than 16 per cent ... was spent walking to and from the fields in the forest because of their distance from the village".[162] This observation has a wider application because, while the area immediately surrounding a village site is the first to be

used for cultivation, when the same shows signs of exhaustion, there is no immediate shifting of the village site to another area. Villagers begin to search for arable land and then establish fields further and further away from the village.

While fragmentation has its adverse effects, it also has its advantages. There are usually cogent reasons why a farmer prefers to have several scattered holdings differing in size. Land of different soil types is required to suit the cultivation of different crops. It might be more advantageous for a farmer to grow vegetables and legumes where the soil and water content is adequate, such as along the river banks, than grow the same in a cassava field as cassava being a root crop can be grown even where the water content of the soil is low. Equally important is the degree of attention required to produce particular types of crops - vegetables require greater attention, so they are placed closer to the village or in the backyard of the house, whereas cassava and maize can, depending on suitability of land, be produced further away from the village. The decision, therefore, to have separate holdings are based more on economic grounds than necessarily land shortage.

In many Zambian communities, it is not surprising to find villagers cultivating different fields simultaneously. Barnes identified three types of gardens cultivated by the Ngoni. These would be a main garden varying in size from about one to three acres, old village site gardens, and moist gardens made near streams.[163] The main gardens are those made by bush clearing and are chosen having regard to the type and quantity of the natural vegetation. The more

thick the vegetation, the more fertile the land is said to be. Main gardens are used for growing staple crops such as maize. Old village gardens are established on the site of former huts and byres in order to take advantage of ashes and cattle manure which restore fertility to the soil. In old village gardens, tobacco is sometimes grown, but they may also be used in the same way as main gardens. On moist gardens near streams vegetables are usually grown. They are also used to grow maize during the hot season when the main fields are short of moisture.

Richards[164] and Stromgaard[165] have shown that the Bemba have a wide range of gardens used sometimes simultaneously, and sometimes at different times of the year. The biggest of these gardens will be the main ash garden on which maize and millet (the staple crops) are grown. There are also a variety of small ash gardens on which two or more such crops are grown and there seems to be extreme specialisation of gardens in terms of what crops are grown. Even a burnt out trunk of a tree, and a mound in an existing garden may be used for growing different crops. No less than thirteen varieties of gardens have been identified by Stromgaard. Among the various Luapula peoples, too, a similar situation of multiplicity of gardens has been said to exist.[166] In these communities cassava which is the main staple crop is grown in the valley where it requires little attention and can withstand occassional droughts. It has also got the advantage that being a root crop, it requires no special storage facilities as it can be left in the ground until needed. In addition to the main garden most families also have gardens of maize or sweet potatoes in the fertile soils

at the edge of the swamp, and around the villages and old village sites vegetable gardens are cultivated early and tobacco in the middle of the rain season.[167] Fragmentation is common in many areas in Zambia, but the reason for its existence is not necessarily that customary land tenure is defective, but the numerous ecological factors determining the appropriate land use suitable for a given piece of land.

In as far as fragmentation is caused by ecological factors rather than land tenure, there would appear to be little point in seeking to make changes in customary landholding as it has no bearing on the problem in the majority of cases, and any attempt to introduce consolidation is bound to be unsuccessful.

(e) Absence of Control

It is the nature of traditional land tenure systems in Zambia that there appears to be no control over land use and land holding. Neither the scholars who have maintained that chiefs and headmen are land allocating authorities nor those who say they are land controlling authorities have gone further to indicate the nature of the control exercised. The impression remains as regards the former that once land has been allocated, the functions of the chief or headman have been fulfilled. Thereafter, the chief or headman is powerless to interfere in the farmer's use of the land. As for the latter, the "interests of control" do not seem to go beyond the exercise of powers of accepting and rejecting "strangers", the settlement of domestic and inter-village disputes and the organisation of hunting and fishing trips.

There is some element of control regarding the setting of fire to bushes surrounding villages and the burning of the remains of gardens after harvest (in systems of ash fertilization), but these controls are solely to prevent accidental damage to granaries or maize heaps still in the gardens. The importance of land control goes beyond the preservation of soil fertility. Land control can be used to promote efficiency in land use and also prevent land accumulation (as has been attempted on State Land).

The government does recognise the importance of control and not only of agricultural land in State Land but also customary land in the Reserves and Trust Land for, "to continue with a situation in which there is no control or system of exploiting natural resources in the country, is planting time bombs, the explosion of which will have dire consequences ..."[168]. In his address to the UNIP National Council in 1970, the President said:

> "The danger, therefore, does not lie only with land which is freehold, which has been a bone of contention in recent years. It also lies in the rights of usage over vast acres of land by individuals under customary law."[169]

Absence of control has not only manifested itself in the manner of land acquisition, but also in the fact that customary land rights may continue irrespective of whether or not the land is being used. There is general agreement that once ownership has been established by occupation or purchase, no one, including the traditional authorities, can deprive the landholder of his land. Many scholars take the position that the inviolability of customary land rights only lasts so long as the individual continues to actually cultivate the land, but does not extend beyond the period

when the land is no longer in use. There is ample evidence to suggest that rights in fallow land are, increasingly, coming under pressure, particularly, in areas of land shortage. In spite of this pressure, the position remains that powerful clans and lineages still "hoard" land which is not being used for cultivation. This was brougt to light by the 1982 Commission of Inquiry. In Gwembe District, the Commission was informed that in Chief Munyumbwe's area, there were "some minority but powerful clans" that held onto unutilised land.[170] It was also revealed to the Commission that undeveloped tracts of land, whose previous owners had either left the area or died, could not be occupied by those in need of land. There was some pressure on the Commission to recommend that aspects of customary land tenure which recognise title to land which is not being used should be abolished.[171]

While the above situation cannot be said to be common throughout the country, it does serve to highlight the possible dangers which may arise from the absence of control of customary land. But the Commission made no proposals regarding steps that could be taken to prevent land accumulation and promote the efficient use of customary land.

Absence of control has been deprecated in respect of both arable land, and grazing land. The discussion of grazing rights has shown that these rights are exercisable by any member of the community, and are, therefore, "communal" in that sense. Although there might be some areas where it is usual to take cattle for grazing, there is, in fact no fixed area known as grazing land. Any

unoccupied land is grazing land. As grazing rights are common to all, there is no incentive on any member of the community to take measures to ensure that there is no destruction of such land. The conservation of these areas and the improvement of their pasture requires periodical investment of capital and labour while damage may be done by over-grazing. Traditional authorities have shown little initiative in mobilising the resources of their communities to prevent over-grazing. Suggestions to apportion grazing land among members of communities which use such land were made to the Commission by some witnesses, and two chiefs in Choma district are said to have supported the move towards "individualisation".[172] Individualisation of grazing land cannot, however, take place without a comprehensive scheme for the grant of registered title. While compulsory registration of title appears to be popular among progressive farmers, it is deeply resisted by the ordinary peasant farmer.[173]

While the absence of control may be deprecated, it must be borne in mind that excessive control has the effect of threatening the security of the landholder. The wider the scope of control, the greater the feeling of insecurity. Insecurity will have the undesirable effect of reducing the incentive of the farmer. In addition it is extremely difficult to control land use in a country with such a wide variation in population density and agricultural potential. One has merely to point at the present difficulties relating to the control of agricultural State Land whose total area is relatively small by comparison to the Reserves and Trust Land.[174] Historically, attempts to control land use in the

Reserves and Trust Land date back to 1906. In that year the British South Africa Company attempted to curb the chitemene system of cultivation to preserve forests. The people who were affected by this order, the Bemba and the Mambwe found it difficult to grow their staple crop, millet, and there were outbreaks of famine.[175] Hence, although the move was rightly aimed at initiating village regrouping as well as soil conservation, the response to the scheme was massive resistance.[176] The attempts made by the colonial government to promote commercial production by methods not destrutive to the soil through Peasant Farming Schemes and Improved Farmer Schemes also met with little success.[177]

If control is to be imposed, it will have to be done selectively so that maximum benefits are reaped in those areas where conditions necessitate the measure. On this basis it will have to begin where there is land shortage, both in terms of arable as well as grazing land. In other areas some general rules preventing the deforestation of wasteland could be introduced and firmly enforced through district authorities and traditional authorities. The Natural Resources Act[178] permits the Natural Resources Board to make orders relating to destocking,[179] but this provision has not been used.

It is important at this stage to examine the findings and recommendations of the Land Commission which relate to control. On livestock, the Commission found that cattle population in the Southern Province had substantially increased between 1975 and 1980 owing, in part, to general reluctance on the part of owners to sell cattle which, to them, represented a form of wealth. This increase in

numbers resulted in the over-grazing of large areas. Apart from calling upon the government to enforce section 26(1)(2) of the Natural Resources Act, the Commission made four other recommendations, all of which were accepted by the government:[180]

> "(i) [not relevant]
> (ii) ... an introduction of a levy on a number of cattle in excess of the carrying capacity of each given area should be considered as a possible measure of livestock control ...;
> (iii) A system of paddocking in the communal grazing (lands) should be encouraged as soon as possible on a self-help basis in order to improve the management of grazing pastures;
> (iv) The agencies involved in the promotion of livestock industry in the rural areas of the Province should increase their efforts in teaching the peasants of the need to keep manageable herds which can adequately be supported by the available grazing land in the area and that these efforts should be extended to production units of the various educational institutions in the Province;
> (v) [Not relevant]
> (vi) The Southern Province Co-operative and Marketing Union responsible for marketing scheduled crops should examine the possibility of undertaking the marketing of livestock as well, possibly to the Cold Storage Board of Zambia".[181]

On the whole, these recommendations would appear to be sound, except that the application of the suggested levy and the encouragement of paddocking on a "self-help" basis are points which are bound to raise a great deal of misunderstanding, both between the government and the cattle-owners and among the cattle-owners themselves. As the suggestion goes, the levy is supposed to be imposed if the farmer introduces an additional beast to graze in a given area. In practical terms villages do not have any given "village lands" which correspond to villages. At

present cattle can roam freely over wide areas or villages and this freedom is important because the availability of vegetation changes in accordance with seasons and the lands in question. It is, therefore, very doubtful whether such a decision would not cause more acrimony than is justified. Another point is that the country's beef industry has never been adequate and present government policy is towards increasing the national herd. Any action, therefore, which may be seen as penalising those who are cattle-owners by requiring them to pay a levy for every animal in excess of the permitted number will be counter-productive. Moreover, the Commission suggested the levy to serve as a penalty, rather than a means of raising funds which can be invested in those areas to increase the carrying capacity. This appears to be the case in that the Commission fails to mention the fund into which the levy should go. If the money is treated as part of the general government revenue, it might never benefit the people who contribute to it. In consequence the areas from which the funds will come will be deprived of investment capital. A better approach would appear to be the creation of a special fund in which these levies should go and the use of such a fund to improve the carrying capacity of the land.

The second recommendation which requires closer attention is that communal grazing land should be paddocked on a self-help basis. The difficulty lies in that, theoretically, there is nothing known as grazing land, as all unoccupied land can be used for grazing. To encourage individuals to, as it were, carve out for themselves individual pieces of land for their livestock, is to

introduce a scramble for unoccupied land, which is bound to cause unnecessary friction among peasant farmers. The economically strong might fence off disproportionate sizes of land for their private use while the others will be forced to share the remainder. No steps to "individualise" grazing land or unoccupied land should be made on a self-help basis. Any paddocking must be a part of an overall scheme of land apportionment in areas of land shortage.

The Commission also addressed itself to the problem of soil conservation. It noted the existence of soil erosion in some areas of the Southern Province and admitted that erosion could have been checked by enforcing the provisions of the Natural Resources Act. It made five recommendations:

> "(i) Conservation Committees provided for under the Natural Resources Act should be re-activated;
> (ii) A campaign to inform the people ... of the dangers of soil erosion should immediately be mounted;
> (iii) People should be made responsible for the cost of constructing soil erosion control works;
> (iv) Soil conservation fund be set up and the Southern Province Co-operative and Marketing Union be made responsible for the collection of funds from farmers in the Reserves and Trust Land areas."[182]

The fifth recommendation relates to soil erosion on State Land. In the White Paper, the government accepted all the recommendations but pointed out that the charging of a fee for the control of soil erosion would require legal backing. What is not clear is what should happen if a farmer fails to pay the fee. This question might be settled under the legislation which will have to be made to enable the government recoup the cost of conservation works.

C. NON-CUSTOMARY INTERESTS IN THE RESERVES AND TRUST LAND

1. The Problem of Converting Customary Land into State Land

The Orders-in-Council regarding the Reserves and Trust Land provide an opportunity for those dissatisfied with customary land tenure to obtain grants of leases in the Reserves and occupancy licences in Trust Land. Upon securing the lease or occupancy licence, the landholder ceases to be governed by customary tenure as his rights and obligations are set out in the relevant Orders-in-Council. As shown in Chapter One, the rationale of the policies of Reserves and Trust Land was to separate land for the use of the indigenous people from that which would be alienated to European settlers. With the coming of independence, it had become clear that these divisions were no longer justified. Yet it is impossible under the Orders-in-Council to turn customary land into State Land because of the provisions in the Orders which were meant to ensure that there would be no diminution in total size of customary land. These provisions all relate to changes in the boundaries of either the Reserves or the Trust Land, and since the wording is different, they are separately quoted as follows:

Article 6(3) of the Zambia (State Lands and Reserves) Order states:

> "The President may make such adjustments of the boundaries of any Reserve that may appear to be necessary or desirable, provided always that in case of any such adjustment, the area of no Reserve shall be materially affected or diminished thereby and on such approval being given the land excepted from a Reserve shall be deemed to be no longer subject to the provisions of this Order with regard to Reserves and the land assigned to a Reserve shall be deemed to be subject to the said provisions." (Emphasis added.)

Section 3(3) of the Zambia (Trust Land) Order states:

> "The President may make such adjustments of the boundaries of any area of Trust Land as may appear to him to be necessary or desirable, provided that in the case of any such adjustment the area of Trust Land concerned shall not be materially affected or diminished thereby, and provided further that the land excepted from the area concerned shall thereupon cease to be Trust Land and shall become State Land and the land assigned to such area in exchange therefor shall become Trust Land." [Emphasis added.]

On the basis of these provisions, when the Ministry of Rural Development requested to have more State Land carved out of rural land,[183] the Commissioner of Lands replied that this could not be done.[184] The first task is to determine whether the difference in wording reflects any differences in policy. It would appear that while the provisions have been differently worded, the import is the same. The import seems to be that boundaries of the Reserves or Trust Land, and also, by implication, State Land may be adjusted, but in so doing, any reduction in the area of each category of land must be compensated for by a corresponding reduction in the area of the category of land which would, otherwise, benefit from the adjustment. Regrettably this is not very clear from the State Land and Reserves Order. A more clear expression of policy is contained in the Trust Land Order. Boundary adjustments should leave the Reserves or Trust Land

correspondingly similar in size to what they were before adjustment.

The second problem is whether these provisions, relating, as they do, to boundary adjustments go far enough to prevent the creation of a piece of State Land within a Reserve or Trust Land. It may be assumed that "adjustments of boundaries" does not mean the creation of new boundaries which may result from the creation of State Land inside a Reserve or Trust Land. It is submitted, however, that the intention of the colonial government must have been to prevent the diminution in the size of tribal land, irrespective of how this might be brought about. This interpretation appears to be justified because in the circumstances in which the President is empowered to grant non-customary interests in the Reserves and Trust Land such interests are of very limited duration and the piece of land to which such interests relate does not cease to form part of the Reserve or Trust Land.

One possibility would appear to be that the President can use his powers to acquire land for public purposes and then turn it over to the Ministry of Rural Development. This possibility was dismissed by the Commissioner of Lands in response to the request by the Ministry. He argued that "the creation of State Land from Reserves and Trust Land for the purposes of turning such land into farms would not amount to setting aside Reserves and Trust Land for 'public purposes' as defined in Appendix 4 ..."[185]. Under the State Lands and Reserves Order, the President may set aside land in any Reserve for public purposes and any such land so set aside ceases to be Reserve Land and becomes State Land.[186]

Under the Trust Land Order, the President is empowered to acquire Trust Land for public purposes[187] and any land so acquired ceases to be Trust Land and becomes State Land.[188] The definition of "public purposes" in both the Reserve Order and the Trust Land Order is the same and includes, inter alia:

> "for exclusive Government use, for the use of the native inhabitants of Zambia, or for general public use".[189]

This definition appears to be wide enough to justify the setting aside of land in both Reserves and Trust Land for purposes of re-settlement as well as alienation to private individuals for purposes of farming. This interpretation, however, runs counter to the purpose for which Reserves and Trust Land were established - to provide adequate land for the indigenous population. Repeated exercise of the power to set aside land for public purposes will have the effect of diminishing the size of the Reserves and Trust Land. Moreover, the limitation of the use to "native inhabitants" is contrary to the current policy of racial integration. It is, therefore, necessary to review the whole question of land categorisation in terms of its relevance to existing circumstances.

2. Provisions Regarding the Grant of Non-Customary Interests in the Reserves and Trust Land

In both the Reserves and Trust Land, the President is empowered to make grants to any person, except that a grant

to a non-native may be made only in three cases: (i) where the land has been set aside for public purposes, (ii) by special permission given under regulations issued by the President, and (iii) by a grant under Article 6A. Under Article 6A the President is empowered to grant leases to non-natives or a rural council, provided that the term does not exceed:

> "i) 99 years in the case of land set aside for public purposes;
> ii) 33 years in the case of a grant to a missionary society or charitable organisation; and
> iii) 5 years in any other case."

Before making a grant under Article 6A(i) above, the President must consult the rural council within whose area the land is situated.[190] Under Article 7, the President made regulations referred to as Reserves Regulations[191] which prescribe the rights and obligations of the lessee. These regulations relate only to grants to non-natives. Other regulations made under Article 7, the Reserve Grants Regulations[192] permit the President to make a grant to any African who would be recommended for the purpose in accordance with the provisions of a law enacted by the Parliament of Zambia.[193] A grant made to an African under the Reserve Grants Regulations was to confer a fee simple estate in the land to the grantee which estate would have been reduced to a lease for a term of one hundred years under the Land (Conversion of Titles) Act.

Under the Trust Land Order, the President may "when it appears to him to be in the general interests of the community as a whole:[194]

> "a) make grants or dispositions of Trust Land to individual natives or rural councils in accordance with the provisions of any

regulations made under section 10 of this Order;

b) grant rights of occupancy of Trust Land to natives or non-natives and demand a rental for the use of any land so granted;

c) grant a right of occupancy in any Trust Land in exchange for any interest in State Land."

The right of occupancy may be granted for any term but not exceeding ninety-nine years and subject to the terms of any contract which may be made between the President and the occupier.[195] The President is, however, precluded from making grants of rights of occupancy to a non-native under terms which free him from paying rent or preclude the President from revising the rent.[196] The power of the President to make grants of Trust Land has been delegated to the Commissioner of Lands, subject to the directions of the Minister responsible for land matters.[197] As in the case of the Reserves, a Trust Land grant made to an African vested in the African an estate in fee simple,[198] which, by reason of the Land (Conversion of Titles) Act has been converted to a lease for a term of a hundred years.

The above summary is the framework within which statutory grants are to be made in the Reserves and Trust Land. In practice, however, there is no strict compliance with the law. In the case of an individual African a grant can be made in either Reserves or Trust Land limited only in duration by the rule that no interest can now be conveyed exceeding a hundred years. Hence, to an African landholder of a statutory grant, no difference exists whether the grant is in the Reserves or Trust Land. Since independence, leases have been granted in Reserves and rights of occupancy in Trust Land to Zambians and non-Zambians, alike, for a

term of ninety-nine years. To Zambians, the grants have been made in respect of commercial, agricultural and residential purposes. The rationale in making these grants is to encourage development by enabling Zambians to obtain loans on the security of a lease. In the case of non-Zambians grants have been made in both the Reserves and Trust Land to enable them to carry on business enterprises which Zambians are at present unable to engage in.[199] The government has, however, insisted upon a condition in respect of grants to non-Zambians that Zambians participate in the enterprise as members of the board of directors.[200]

There is, however, one important restriction on the grant of ninety-nine year leases, and this is the requirement of survey diagrams. Section 12(1) of the Lands and Deeds Registry Act[201] states that "every document relating to land presented for registration shall describe the land by reference to:

a) a diagram, as defined by the Land Survey Act which has been approved by the Surveyor-General, the year and number of which is quoted in such document; or
b) where the Surveyor-General is satisfied that an actual survey or the approval of a diagram is, for the time being impracticable, a sufficiently detailed plan which has been approved by the Surveyor-General subject to such conditions, if any, which the Surveyor-General may think fit to impose;

and such diagram or plan shall be annexed to such document" But under section 12(3):

> "Notwithstanding the provisions of subsection 1, any lease or agreement for a lease of land creating a term not exceeding fourteen years, or any assignment or sublease of the whole of the land thereby demised or let, may, in lieu of a diagram or plan mentioned in subsection 1, have annexed thereto a sketch plan approved by the Surveyor-General showing with reasonable accuracy the position of the

boundaries of such land."

In the absence of a certified diagram, the President may only grant an interest for the duration of fourteen years, pending the preparation of the survey diagrams. Where the grant is of a lease or occupancy licence for a term of fourteen years, only a "sketch plan" is required. What is required on the "sketch plan" is a description of the property and its location in relation to the surrounding physical features.

3. Procedure for the Acquisition of a Grant

The manner in which an individual may obtain a grant in the Reserves and Trust Land is of utmost importance to individuals who are dissatisfied with customary land tenure. At the same time, it is important to carry out a thorough investigation of the title to, and the extent of the land in question in addition to any interests other people may have in the land. The absence of a machinery for proper verification of boundaries and subsisting interests may encourage people to obtain title to large tracts of land on which some villagers may in fact be situated. It is for this reason that the Reserve Order requires the President to consult the rural council within whose area the land is situated.[203] Similarly, under the Trust Land Order the President, before making the grant, must have regard to the customary laws existing in the district and consult the rural council in whose area the land is situated.[204] The

expressions "rural council" and "local authority" have been widely interpreted to include traditional authorities such as chiefs.[205] An official government circular issued in May 1985 makes the position clear by stating: "Local authority, in the Orders, has been administratively understood to mean the Chief and the District Council".[206] Thus, while the law does not go so far as to provide for the participation of traditional authorities, administrative practice has remedied this omission.

The procedure for acquisition has not always been consistent. Prior to 1985, the practice adopted was to require any applicant for land to obtain the consent of the chief, the rural district council and the District Secretary. Consent was evidenced by means of endorsements of the above authorities on the sketch plan depicting the piece of land being applied for.[207] One of the defects with this procedure was that none of the officials was compelled to carry out a physical inspection or to verify the nature and extent of the land in question. The other defect was that it was easy for individuals to obtain endorsements by council officials who were not, however, authorised to do so. Where this was done, the fact would not be obvious to the Commissioner of Lands.

The new procedure contained in the Land Circular No 1, of 1985 is a great improvement over the previous procedure. It spells out the rules governing grants in both the Reserves and Trust Land as the following:

i) In order to ensure that a local authority has been consulted, the Commissioner of Lands will insist that each recommendation is accompanied by:
   (a) Written consent of the chief under his hand;

(b) extracts of the minutes of the committee of the council responsible for land matters embodying the relevant resolution and showing who attended, duly authenticated by the chairman of the council and the District Executive Secretary;
(c) extracts of the minutes of the full council with the relevant resolution and showing who attended, duly authenticated by the chairman of the council and the District Executive Secretary;
(d) four copies of the approved lay out plan showing the site applied for, duly endorsed and stamped by the chief, chairman of the council and the District Executive Secretary.

ii) The preparation of the lay out plan showing the area applied for should be done by persons possessed with the cartographic know-how.[208]

iii) It has been decided, for the time being, not to allocate more than two hundred and fifty hectares of land for farming purposes in the Reserves and Trust Land areas. The District Councils are, therefore, advised not to recommend alienation of land on title in such areas in excess of two hundred and fifty hectares as such recommendations would not be considered.

iv) In each case recommended to the Commissioner of Lands, the recommending authority shall certify that it has physically inspected the land applied for and confirm that settlements and other persons' interests and rights are not affected by the approval of the application.

This procedure is an improvement over the former in its insistence on authenticated extracts of minutes of rural councils and on physical inspection. The obligation on the President to consult, which does not ordinarily carry with it the necessity to obtain the consent of the local authority, has been extended to securing consent. No grant has ever been made by the President where consent has been withheld.[209] Another important reform has been the

restriction in terms of size to two hundred and fifty hectares. The new procedures, however, raise fresh problems, namely the delay which must be expected from complying with the process, and the problem of dealing with interests already existing in the land, which is the subject of the grant. Delay will not only result from the need to obtain the extracts of minutes of the rural councils but also from the need to inspect the land. The Land Commission of 1982 recommended that the final decision as to whether or not a grant should be made should lie with district councils who should also be required to keep a register of all such grants.[210] The government rejected this recommendation.[211] One possible reason for the rejection is that it would result in the loss of control by the central government over grants of land in the Reserves and Trust Land. But the Commission's recommendation that the initial consent should be given by the chief only after consultation with the village headman or headmen, as the case may be, was accepted.[212] It is an improvement over the present practice which enables the chief, on his own, to give consent without the necessity for him to liaise with any other traditional authority.

The other problem is how to treat existing interests. The regulations governing the grant of leases and occupancy licences are silent on this, and even the model lease in respect of labour depot sites in the Reserves makes no mention of this issue. The assumption could have been that the land which would be the subject of the grant would be unoccupied. But even in the case of unoccupied land, it is practically impossible to find any piece of land,

particularly, to the extent of two hundred and fifty hectares that will not have a community interest such as a right of way to another village, the river, or grazing land etc. The present Reserves lease (which is similar to the right of occupancy), provides under clause 2(12), that the lessee covenants with the President:

> "Not to disturb or remove any person, village or plantation existing on the said Reserve Land at the date of these presents without the consent, in writing, of the President."

With regard to the right of way, the proviso to clause 4(4) states that:

> "The existing roads and thoroughfares, including footpaths, over the said Reserve land shall remain free and uninterrupted unless the same shall be closed or altered by the President or other competent authority."

The Deputy Commissioner of Lands is aware of the problem of existing interests for he admits that the manner in which villagers are scattered is such that it is difficult, in practice, to find a piece of land of a reasonable size, which is completely unoccupied.[213] The solution proposed under clause 2(12), of recognising the interest of those already in occupation of the land and protecting such interests until such time as the President gives consent to their removal is a very unsatisfactory one. Existing interests are an encumbrance on the title of the lessee or licensee, making it difficult for him to use the land as security for a loan. It cannot be assumed that the President will find it politically safe to consent to have villagers moved from one place to another, and thus, it can be deduced that consent will not, invariably, be granted. In the circumstances, the solution would appear to be that

first, wherever possible, only unoccupied land should be considered for a grant; second, where there are a few scattered homesteads, a grant should not be made until an inquiry has been held as to the existing rights and the facilities for re-settlement. Provision must also be made for the proposed grantee (applicant) to pay compensation which the displaced persons, the traditional authorities and the council officials consider to be adequate. Even this suggestion is fraught with the danger that some villagers will still be unfairly treated, nevertheless it permits the bringing of certain areas under commercial cultivation which may be held up because two or three people have broken away from the village and settled elsewhere on their own. For the future, it is important to campaign for village re-grouping which will lead to the release of vast areas for more intensive agricultural use. The difficulty with village re-grouping is that it runs counter to the mode of production, shifting cultivation. The success of re-grouping depends on the extent to which government can educate the masses on more permanent systems of cultivation which involves greater use of inputs such as fertilizer.

Moreover, clause 2(12) is bound to provoke friction between villagers who are already in occupation of land, the subject of the grant. Villagers are likely to continue to use land in the same way, extending it as they think manageable. They are hardly likely to be persuaded that they now must be confined to the existing farms on account of the fact that someone has been granted the land immediately adjoining.

As to the protection of easements such as rights over

roads, thoroughfares and footpaths, it is important that the access of villagers to water, grazing land and other villages should be preserved. Some caution must, however, be exercised as this protection will make it impossible for the lessee or licensee to fence off animals which may damage his crops. Where such damage is likely, it should be made easy to secure from the President his consent to have the farm enclosed. It is also important not to take a literal interpretation of "footpath" as some paths may only lead to a dead end. Footpaths must be seen in relation to the frequency of their use and their importance to the villagers.

4. Rights and Obligations of Lessees and Licensees

The rights and obligations of lessees in the Reserves are the same as those of licensees in the Trust Land. These are contained in the Reserve Grant Regulations and the Trust Land Grant Regulations and incorporated in the lease and occupancy licence, as the case may be. Any reference in the following discussion to leases will apply mutatis mutandis to occupancy licences. The lease has terms similar to the statutory lease of State Land and scheduled agricultural land, although some provisions are peculiar to it.

So long as the lessee pays the rent and complies with all the covenants and conditions in the lease, he will "peaceably hold and enjoy" the land without any interruption by the President or any person lawfully claiming under him.

This security of tenure is, however, subject to various provisos of which the important are numbers 6, 7 and 8. Under 6, the President reserves the right at any time to acquire a strip of land of a uniform width not exceeding sixty metres for the purpose of constructing roads or railways without compensating the lessee except in respect of damage to unexhausted improvements existing on the land. The amount of compensation is to be fixed by government valuers, but in the event of a dispute as to such amount, the lessee may refer the matter to arbitration. One of the principles that emerges from this proviso is that undeveloped land will not be compensated for. This is no longer surprising considering the fact that the principle of "land without value" has been the main thrust of the land tenure reforms introduced in 1975. But the other principle which has not been in keeping with the modern trend is that of arbitration. It should be recalled that disputes as to the amount of compensation arising under the Lands Acquisition Act, 1970, must, ultimately be referred to the National Assembly, and not an arbitrator. Due to delay and the complexity of National Assembly proceedings, arbitration appears to be a better alternative. The loss of the land which has been excised is not the subject of compensation, and there is no provision by which the lessee can be offered an alternative strip of land to take the place of that which has been taken away.

Under proviso number 7, the President has the right to resume possession of the land for public purposes as defined in the Lands Acquisition Act, 1970, and in addition to those purposes, the establishment of a town is specifically

included. The Lands Acquisition Act does not, however, define "public purposes" at all and the reference to this expression in the proviso must have been by error. It is not difficult to envisage how this error arose. The expression was contained in the Public Lands Acquisition Ordinance which the Lands Acquisition Act repealed. When the law was revised following the repeal of the Ordinance, the Act was substituted without recognising other inconsistencies. It may be inferred, however, that the intention was to empower the President to acquire land in the Reserves under the provisions of the Lands Acquisition Act.

Finally, proviso 8 empowers the President to re-enter whenever the rent remains unpaid for twenty-eight days, or the lessee fails to comply with any of the covenants and conditions in the lease. In addition to his right of re-entry, the President retains the right to take any action in respect of breaches of the covenants. But subject to the above provisos, the lessee's position is no less secure than that of the statutory lessee under the Land (Conversion of Titles) Act, 1975. He has the right to clear the land to such an extent as may be necessary for farming and building operations and to use the trees and timber for the maintenance of buildings and other domestic uses, although he may not sell or remove them without the written consent of the President.

The lessee is under various disabilities, however. A grant of land in Reserves does not enable any dealing in the land comprised in the grant without prior consent of the President:[214]

"a) whereby any interest in such land or part thereof is granted to any person who is not an African; or
b) within five years of the commencement of the grant."

Further, where land in the Reserves has been granted to an African, it cannot be subdivided without the prior consent of the President, and save as may be provided by a law enacted by the Parliament, such land cannot be disposed of by will.[215] Any document or agreement purporting to enable the African lessee to deal with the land contrary to regulation 4 is to that extent void.[216] These restrictions were intended to prevent Africans from unadvisedly disposing of their land which is the major source of their livelihood. They were also intended to protect the African from ambitious entrepreneurs who may wish to accumulate land by inducing peasants to sell out for money. The provisions do not, however, go far enough in that they permit such land to be transferred, after five years, to any other African without the consent of the President. This defect has, nonetheless, been remedied by a covenant in the lease which states:

> "Except with the prior written consent of the President not to assign sublet mortgage charge or in any manner whatsoever encumber or part with possession of the said land or any part thereof or interest therein or concerning the same or attempt so to assign sublet mortgage charge encumber or part with possession of the said Reserve Land."[217]

The wording of the covenant is similar to the provisions relating to restraint on subdivision and alienation of land in both the Land (Conversion of Titles) Act and the Agricultural Lands Act.

The remainder of the covenants in the lease, apart from

those relating to the payment of rent and rates, are meant to serve, basically, two important purposes, that is, to promote agricultural development, and to conserve soil fertility. The lessee must reside, personally on the land, but, unlike the lessee of a scheduled farm, he may engage a competent manager, in his absence, to run the farm.[218] As pointed out in Chapter Two, this option is necessary, as the manager may be more qualified and experienced than the lessee himself. The lessee also covenants not to abandon the land[219], or permit it to remain "idle" for a period of more than three years except with the prior written consent of the President.[220] Similar provisions are also binding on the lessee of agricultural land on State Land.

Further, the lessee must take proper care to maintain all the improvements on it.[221] Within a period of twenty-four months from the date of the certificate of title, the lessee must erect on the land "good and substantial buildings" to the approval and satisfaction of the President, to a value which is determined at the time of the grant.[222] This is the minimum development clause, but in contrast to those that bind lessees of State Land, this clause permits the fixing of a minimum value of the improvements, and the period is shorter than the three years permitted for statutory lessees on State Land.[223] In addition, the lessee must, within the said twenty-four months "cultivate a reasonable size of arable land".[224] There is no similar covenant or provision binding statutory lessees but lessees of scheduled farms must comply with any order of the Agricultural Lands Board fixing the proportion of the land which must be cultivated annually.[225] The

question that arises is which, of the two methods of compelling cultivation, is preferable. The fixing of portions is hardly commendable as the nature of the land itself might make it difficult for the farmer to comply within the period permitted. Thus lessees of land with poor terrain or dambos may be unfairly treated if they have to cultivate, within the prescribed period, the same extent as the others. It is preferable that a lessee be permitted to cultivate whatever proportion that the President may determine as reasonable within the time available, taking into account the particular circumstances of the land.

In terms of conservation the lessee must "comply with the practice and accepted methods of good husbandry"[226] and "not keep more stock than the reasonable carrying capacity of the said Reserve Land".[227] There are similar provisions binding statutory lessees and lessees of scheduled land. In order to enable the State to ensure that the covenants and conditions are being complied with, the President is empowered to enter upon the Reserve Land, at any reasonable time during the day, in order to examine the state of cultivation, condition and repair, and for the purpose of inspection and survey "in the public interest".[228] There are, therefore, some similarities and some contrasts between the rights and obligations of lessees of Reserve Land and those of lessees of agricultural State Land.

5. Evaluation of the system of grants in the Reserves and

Trust Land

The demand by some farmers for greater security of title than that offered by customary land tenure calls for an evaluation of the system of grants in the Reserves and Trust Land in terms of its suitability to cater for those who are dissatisfied with customary land tenure. The issue is whether the system based, as it is, on individual initiative is better than a systematic adjudication of the rights of all members of a community in a district or region. There are various advantages in relying on individual initiative both from the government's point of view and also from that of the community. As far as the government is concerned, there is little manpower required. The personnel that process the papers, chiefs, councils and the officials of the Lands Department are already part of the establishment performing other duties, and no extra officers have had to be engaged to handle, exclusively, applications for grants in the Reserves and Trust Land. The government does not have to use its surveyors to prepare survey diagrams or sketch plans for each and every applicant. The government thereby makes a saving in terms of manpower as the Survey Department is severely handicapped by a shortage of manpower.[229] Consequently, the government also saves in terms of cost which might, otherwise, have been incurred in paying additional surveyors and for their equipment. The government incurs little cost under the prsent system, as even the inspection of the land, which is the subject of the application, is carried out by the rural council in whose area the land is situated.

Moreover, reliance on individual initiative is likely

to raise less controversy than systematic adjudication on a grand scale. The demand for the modification of customary tenure is more evident among those who are less traditionally-inclined, the so-called "progressive" farmers, than among the ordinary peasants. In such circumstances, a piece-meal approach at the instance of interested individuals would appear to be preferable as it does not compel the others to follow suit. Individual initiative can also be defended on the basis of the differences in the systems of land use. Among Zambian ethnic communities, there are different systems of cultivation, ranging from shifting cultivation to permanent cultivation, the latter being more prevalent in areas of land shortage. A wholesale system of adjudication and registration would be more appropriate for farmers who have advanced to a more permanent system of cultivation than for the others. If those who practice shifting cultivation are unduly restrained on account of registration of title without the government taking measures to improve the soil, starvation might result. It is the recognition of this problem that under the system introduced by the colonial government in 1962 under the Native Reserves and Native Trust Land (Adjudication and Titles) Ordinance, adjudication and registration could only be carried out at the instance of rural councils and traditional authorities. When the ordinance was re-enacted in 1966 only one area had been declared an adjudication area. When this Act was repealed in 1975[230] only the Orders-in-Council governing the Reserves and Trust Land provided an alternative to customary land tenure.

There are some problems connected with this individual approach to registration, however. Land in the Reserves and Trust Land is in an unsurveyed state, and it is therefore up to the individual, by himself, to pay the private surveyors. While it is possible for entrepreneurs in urban areas who want land in the Reserves and Trust Land to raise the survey fees, villagers may not be able to afford them. It is perhaps for this reason, among others, that few, if any, villagers have taken advantage of the system. The procedure for securing a grant is also fraught with difficulties. The procedure involves the applicant in costly travels to traditional authorities, the rural council and the Department of Lands. Expenses which could have been avoided under a system whereby the State carries out the preparations for the grant including the surveys. Moreover, "the obtaining of consent from the chief and the rural council can be ... discouraging for Zambians and non-Zambians alike when a land developer has no ethnic ties with the area in question".[231] The consent of traditional authorities is easier to secure where one is known as a "local" rather than a "stranger".

But the worst disadvantage of the individual approach is that it is unplanned. In the absence of planning the lands held on leases and on occupancy licences are scattered throughout the country, thus making it difficult for government, through the Commissioner of Lands, to ensure that lessees and licensees comply with the terms and conditions attaching to their leases and licences. In view of the difficulties the government has faced in monitoring the development of State Land, it is difficult to conceive

how it can do the same to the Reserves and Trust Land. A planned approach whereby unoccupied land is first identified and then divided into blocks of farms for alienation to interested farmers would make it easier for land officers to check the condition of the farms. Alternatively, an adjudication of an area followed by grants to individual peasants would still make it easier for the government, with the help of rural councils, to keep under review the state of the land.

Finally, individual initiative does not take into account the future requirements of the growing population in the Reserves and Trust Land. Under the present procedure no application for a grant in the Reserves or Trust Land will be considered if the land in question is in excess of two hundred and fifty hectares. This limitation is not an adequate safeguard as a number of economically powerful persons may acquire so much amongst themselves leaving nothing for posterity. It was one of the declared intentions of the colonial government in creating the Reserves and Trust Land that adequate land be set aside for the indigenous Africans, but the system of grants in these areas, in its present form, will eventually so reduce the size of the land under customary tenure as to force more and more villagers to the urban areas in search of work, rather than encourage the urban unemployed to return to the villages.

In the light of these advantages and disadvantages, and taking into account the variations in patterns of agricultural production, population density and ecological factors both approaches could be employed depending on the

circumstances pertaining to a given district or rural area. Grants at the instance of individual applicants may continue to be made in areas with a small population density, where commonly, shifting cultivation is in practice. The power to enforce covenants would have to be shared with rural councils which have an advantage over the Lands Department by virtue of their relative proximity to the farmers. Where, due to scarcity of land, people cultivate land on a permanent basis, a comprehensive system of adjudication and registration of title is advisable to give greater security of tenure to the landholders. At present the country has no legal machinery by which such a system could be implemented. It may be that the move to introduce adjudication and registration of title may face a great deal of opposition, particularly from those who believe that it may diminish the traditional authorities' powers of control. To forestall such opposition, the decision as to whether or not the system of registration of title should be introduced and at what stage should be left to the communities themselves, acting through their traditional leaders and rural district councils.

The rights and obligations of lessees and licensees in the Reserves and Trust Land share some features with those binding statutory lessees and lessees of scheduled farms on State Land. Although not altogether satisfactory, they are more suited to emergent farmers with a reasonable income than peasant farmers. The requirement, for instance, that the lessee should construct buildings of a substantial value within a year of occupation definitely rules out compliance by the majority of peasants in the villages. This req

uirement limits the extent to which villagers are likely to apply for grants in the Reserves and Trust Land.

D. CONCLUSIONS

It is the declared government policy that rural development must be based on the subsistence farmers who live in rural areas. Government policy does not, however, go further to show how this might be achieved except to point at the need to impose land control in the Reserves and Trust Land. The Natural Resources Act provides a framework for the use of State power to conserve natural resources but the Act has not been enforced. In any case existing legislation does not empower the State to control the manner by which the individual customary landholder uses the land. Such control exists over State Land, but there is no comparative system of control over land held under customary land tenure. As long as government continues to be undecided as to what direction land policy in the Reserves and Trust Land should take, the dual system of land tenure will continue.

In the meantime there are growing demands on the part of emergent, or semi-commercial farmers to have certificates of title to land, while large areas are becoming over-grazed. Although such demands are not widespread there is a need to provide a proper legal framework within which

those who are dissatisfied with customary land tenure and believe that a documentary title may enable them to use their land as security for loans can acquire such titles.

The alternative system of landholding in the Reserves and Trust Land, namely leases and occupancy licences, is based on archaic Orders-in-Council which are at odds with existing circumstances. The system, based as it is on individual initiative, must be reviewed in the context of its relevance to all categories of farmers, the need for planned development, and the protection of the interests of subsistence farmers in the rural areas.

NOTES

1. Ministry of Lands and Natural Resources, Annual Report of the Lands Department, 1972, (Government Printer, Lusaka, 1978), p. 2.

2. See Kaunda, K.D., A Path of Revolution, (Zambia Information Services, Lusaka, 1978), p. 29.

3. Kaunda, K.D., Zambia's Economic Revolution, op. cit., p. 17.

4. Ibid.

5. Ibid.

6. Kaunda, K.D., Take Up the Challenge, op. cit., p. 47.

7. Ibid. The President's appreciation of customary land rights as amounting only to "rights of usage", is debatable, but it seems to emanate from the theory of communal landownership, which is an ingredient of the ideology of African socialism.

8. One minor issue that can be disposed of at the outset is the legal basis for the application of customary land tenure in the Reserves and Trust Land. Frank derives such a legal basis from the Orders themselves under which the lands are "set apart" for the "sole and exclusive use and occupation" (Reserves) or the "sole use and benefit" (Trust Land), of the natives of Zambia. In addition, the non-customary tenures enjoyed are specifically provided for, and in the case of occupancy licences, before the President can grant the same, he must have regard to the native laws and customs of the people in the area where the land is situated: Frank, F.M., Customary Land Law in Africa, (FAO, Rome, 1967), p. 8. Some scholars have, however, looked at the vesting of land in the Reserves and Trust Land in the President as giving rise to the necessity of a specific conveyance to an individual in order that he may have a good title: Mvunga, M.P., Land Law and Policy in Zambia, (University of Zambia, Institute for African Studies, Mambo Press, Gweru, 1982), p. 64. The important point to bear in mind is that the Reserves could be alienated to "natives whether as tribes or portions of tribes", and the inference to be drawn from this is that individuals will hold land in accordance with their tribal or customary systems of land tenure.

9. "'Land', 'Tenure' and Land-Tenure", in Biebuyck, D., (ed.), African Agrarian Systems, (OUP, London, 1963), p. 101.

10. White, C.M.N., "Terminological Confusion in African Land Tenure", Journal of African Administration, 1958, X, 3.

11. Obol-Ochola, J., "Ownership of Land in African Customary Tenure" in Obol-Ochola, J., (ed.), Land Law Reform in East Africa (Milton Obote Foundation, Kampala, 1969), p. 13.

12. "Do African Systems of Land Tenure Require a Special Terminology?", Journal of African Law, 1965, 9, 2, 115.

13. Ibid.

14. Okoth-Ogendo, H.W.O., "Property Theory and Land Use Analysis: A Theoretical Framework", Journal of Eastern African Research and Development, 1975, 5, 1, 44.

15. Ibid.

16. Allott, A.N., "Towards a Definition of 'Absolute Ownership'", Journal of African Law, 1961, 5, 2, 99.

17. Obol-Ochola, J., op. cit., p. 14.

18. Ibid., p. 15.

19. Allott, A.N. (1961).

20. Mvunga, M.P. (1982).

21. Obi, C.S.N., The Ibo Law of Property, (Butterworths, London, 1963), pp. 4-43.

22. This approach is also preferred by Mvunga who says: "What we, therefore, mean when we say the landholder or occupant is owner is that such a person has more rights and interests in the land than anybody else", Mvunga, M.P., The Colonial Foundations of Zambia's Land Tenure System, (Neczam, Lusaka, 1980), p. 23.

23. Brock, B., "Customary Land Tenure, 'individualisation' and Agricultural Development in Uganda", Eastern Africa Journal of Rural Development, 1969, 2, 2, 3.

24. Bentsi-Enchill, K., op. cit., pp. 115-116.

25. Gouldsbury, C. and Sheane, H., The Plateau of Northern Rhodesia, (Edward and Arnold, London, 1911), pp. 59-60.

26. Elias, T.O., The Nature of African Customary Law, (Manchester University Press, Manchester, 1956), p. 164.

27. Yudelman, M., Africans on the Land, (Harvard University Press, Cambridge, 1964), p. 109.

28. Eicher, C.K. and Baber, D.C., Research on Agricultural Development in Sub-Saharan Africa - a Critical Survey, (Michigan State University International Development Papers, East Lansing, Michigan, 1982), p. 37.

29. UN FAO, African Agricultural Development, (Rome, 1966), p. 60.

30. Mugerwa, P.J.N., "Land Tenure in East Africa - Some Contrasts", East African Law Today, (BIICL Commonwealth Law Series 5, London, 1966), p. 101.

31. Ngandwe, C.O., "African Traditional Land Tenure and Agricultural Development: Case Study of the Kunda People in Jumbe", African Social Research, 1976, 21, 53.

32. Gluckman, M., "African Land Tenure", Rhodes-Livingstone Journal, 1945, 3, 1.

33. Bentsi-Enchill, K., op. cit., p. 116.

34. Conroy, D.W., "The General Principles of Land Tenure", in Allan, W. and Gluckman, M., (eds.), Landholding and Land Usage Among the Plateau Tonga of Mazabuka District, A Reconnaisance Survey of 1945, (Oxford University Press, London, 1948), p. 114; Barnes, J.A., "The Fort Jameson Ngoni", in Colson, E. and Gluckman, M., (eds.), Seven Tribes of British Central Africa, (OUP, London, 1951), p. 214; Watson, W., Tribal Cohesion in a Money Economy, A Study of the Mambwe People of Northern Rhodesia, (Manchester University Press, 1958), p. 101, White, C.M.N. [1958], p. 128, and Colson, E., "The Plateau Tonga of Northern Rhodesia", in Colson, E. and Gluckman, M., (eds.), (1951), p. 148.

35. Ibid.

36. [1976], Zambia Law Reports, p. 304.

37. Ibid., p. 309.

38. Civil Case No. S.J./138/74 (Chipata Resident Magistrate's Court).

39. Gluckman, M., "Essays on Lozi Land and Royal Property", Rhodes-Livingstone Papers, No. 10 (Manchester University Press, Manchester, 1943), p. 29.

40. Gluckman, M., The Ideas in Barotse Jurisprudence, (Yale University Press, New Haven and London, 1965), p. 78. At a meeting of the villagers and the Paramount Chief, the Litunga, the Chief is said to have dispelled rumours that his people may lose their land to the colonial government if they participated in a rice production scheme with these words: "How can it be said that you will lose your land when it is mine?", Glennie, A.F.B., "The Barotse System of Government", Journal of African Administration, 1952, 4, 1, 13.

41. Gluckman, M., "African Land Tenure", op. cit., p. 7.

42. Watson, W., op. cit., p. 95. William also comes to the same general conclusion as he says that in all southern Bantu tribes, chiefs did not give land directly to their subjects, but to sub-chiefs who, in turn, allotted shares to village headmen, and that the number of steps in this hierarchy of land rights depended on the depth of the political hierarchy: William, A., The African Husbandman, (Oliver and Boyd, Edinburgh, 1965), p. 361.

43. White, C.M.N., (1958), p. 125.

44. Ibid. That acephalous communities have no conception of a tribal area is debatable. Although villages are independent of each other, there is a strong feeling of unity particularly when the villages are under threat from other tribes or foreigners.

45. White, C.M.N., "A Survey of African Land Tenure in Northern Rhodesia", Journal of African Administration, 1959, 11, 4, 173.

46. Ibid.

47. Colson, E., "The Plateau Tonga of Northern Rhodesia", op. cit., p. 120.

48. Colson, E., "Land Rights and Land Use Among the Valley Tonga of the Rhodesian Federation: The Background to the Kariba Resettlement Programme", in Biebuyck, D., (ed.) (1963), p. 141.

49. Colson, E., (1951), p. 120.

50. Conroy, D.W., op. cit., pp. 92-93.

51. [1974], Zambia Law Reports, p. 188.

52. Ibid., p. 193.

53. Ibid., p. 191.

54. Mvunga, M.P., (1982), p. 22. For local court cases tending to prove the absence of a hierarchy of estates, see pp. 22-23.

55. Conroy, D.W., op. cit., p 92; Colson, E., (1963), p. 141; White, C.M.N., (1959), p. 174.

56. Gouldsbury, C. and Sheane, H., op. cit., p. 60.

57. Stromgaard, P., "A Subsistence Society Under Pressure: The Bemba of Northern Zambia", Africa, 1985, 55, 1, 41.

58. Cunnison, I., The Luapula Peoples of Northern Rhodesia, (Manchester University Press, Manchester, 1959), p. 18.

59. Mvunga, M.P., (1982), p. 34.

60. Smith, E.W. and Dale, A.M., The Ila-Speaking Peoples of Northern Rhodesia, Vol. 1 (University Books, New York, 1920), p. 387. As to the Tonga and the Bemba, see Coissoro, N., The Customary Laws of Succession in Central Africa, (Lisboa, 1966), p. 67 and p. 178 respectively.

61. Coissoro, N., op. cit., p. 67.

62. Gluckman, M., (1945), p. 8.

63. Coissoro, N., op. cit., p. 68.

64. Ibid.

65. Mvunga, M.P., (1982), p. 36.

66. Ibid.

67. Priestly, M.J.S.W., and Greening, P., Ngoni Land Utilization Survey, 1954-1955, (Government Printer, Lusaka, 1956), p. 22.

68. White, C.M.N., Land Tenure Report, No. 3 (unpublished).

69. Coissoro, N., op. cit., p. 222.

70. Ibid.

71. Mvunga, M.P., (1982), p. 37.

72. Barnes, J.A., "The Fort Jameson Ngoni", in Colson, E. and Gluckman, M., (1951), op. cit., p. 212.

73. Priestly, M.J.S.W. and Greening, P., op. cit., p. 22.

74. Conroy, D.W., op. cit., p. 95.

75. Ibid. Of the Mambwe Watson wrote, "A man cannot sell his land. He may, however, sell the potential crop. If a man has prepared virgin soil, thrown up mounds and planted seed he can allow another person to continue to work the land and take off the crop in return for a cash payment", Watson, W., Tribal Cohesion in a Money Economy. A Study of the Mambwe People of Northern Rhodesia, op. cit., p. 98. See also Colson, E., "Land Law and Landholding Among the Valley Tonga", South-Western Journal of Anthropology, 1966, 22, 1, 179.

76. William, A., The African Husbandman, op. cit., p. 369.

77. Ibid., pp. 369-370.

78. White, C.M.N., "Survey of Land Tenure in Northern Rhodesia", op. cit., p. 4.

79. Ibid., p. 5.

80. Mvunga, M.P., (1982), p. 38.

81. Ibid., p. 40.

82. Interview with Choma Local Court Officers, 13th March, 1985.

83. Mvunga, M.P. , (1982), p. 41.

84. Ibid. As early as 1920, Smith and Dale, op. cit., had no doubt that land sales did take place among the Ila: "Occasionally land may be sold; the purchaser acquires not only the land, but all rights not specifically reserved. The purchase price - in cattle or whatever it may be is named itongo, and remains the property of the community", (p. 388).

85. Ibid., p. 42.

86. Scudder, T., The Ecology of the Gwembe Tonga, Kariba Studies, Vol. 11, (Manchester University Press, Manchester, 1962), p. 64; see also Colson, E., Marriage and the Family among the Plateau Tonga of Northern Rhodesia, (Manchester University Press, 1958), pp. 108-109.

87. Colson, E., (1963), p. 146.

88. Ibid.

89. Conroy, D.W., op. cit., p. 101.

90. Ibid., p. 104.

91. Coissoro, N., op. cit., p. 225.

92. For a discussion of the different views regarding the rights of women in the land among the Tonga, see Conroy, D.W., op. cit., pp. 104-106.

93. Scudder, T., op. cit., p. 64.

94. This was revealed by members of the Feni Multi-Purpose Co-operative Society based at Feni (the old Ngoni Native Authority centre) on the 29th March, 1985. The Luvale have similar rules, see Mvunga, M.P., (1982), pp. 42-43.

95. Watson, W., op. cit., p. 100.

96. Ibid.

97. For a discussion of some local court cases which prove this point, see Mvunga, M.P., [1982], p. 43.

98. Richards, A.I., "The Bemba of North-Eastern Rhodesia", in Colson, E. and Gluckman, M., (eds.), (1951), op. cit., p. 182.

99. Cunnison, I., op. cit., p. 123; Doke, C.M., The Lambas of Northern Rhodesia, (George G. Harrap and Company Ltd., London, 1931), p. 170.

100. Coissoro, N., op. cit., p. 225; see also Richards, A.I., Land, Labour and Diet in Northern Rhodesia, (Oxford University Press, London, 1939), p. 190.

101. Gluckman, M., "Kinship and Marriage among the Lozi of Northern Rhodesia and the Zulu of Natal", in Radcliffe-Brown, A.R. and Forde, D., (eds.), African Systems of Kinship and Marriage, (Oxford University Press, London, 1950, Reprint, 1960), p. 193.

102. Ibid.

103. Law Development Commission, Report of The Law of Succession, (Government Printer, Lusaka, 1982), p. 24.

104. Ibid. Appendix B, p. 30.

105. Coissoro, N., op. cit., p. 86.

106. Law Development Commission, Report on the Law of Succession, op. cit., p. 28.

107. Mvunga, M.P., (1982), pp. 49-53.

108. Coissoro, N., op. cit., p. 244.

109. See Coldham, S.F.R., "The Law of Succession in Zambia: Recent Proposals for Reform", Journal of African Law, 1983, 27, 2 165.

110. Footnote 40.

111. There are some elements of lineage landholding among the Luvale in North-Western Province and Lungu found on the shore of Lake Tanganyika: White, C.M.N., "A Preliminary Survey of Luvale Rural Economy", The Rhodes-Livingstone Papers, 1959, 29, 31.

112. Siddle, D.J., "Land Use and Agricultural Potential" in Davis, H., (ed.), Zambia in Maps, op. cit., p. 34.

113. Richards, A.I., (1939), p. 270.

114. Conroy, D.W., op. cit., pp. 96-97.

115. The panel consisted of the Presiding Justice, two Local Court Justices, the Officer-in-Charge, Local Courts (Choma District), and the Clerk-in-Charge Local Courts, who was also a headman. The interview was held on the 13th of March, 1985.

116. S.I. No. 134 of 1980. The Commission consisted of Mr. Justice Sakala as Chairman and five Commissioners - Messrs A. Ndalama, K. Nkwabilo, D. Senathirajah, B. Sharma, and Dr. S. Silangwa. Mr. Nkwabilo and Mr. Sharma were later replaced by Mr. A.N. Beaumont and

Professor M.P. Mvunga.

117. Republic of Zambia, A Report of the Commission of Inquiry into Land Matters in the Southern Province, 25th June, 1982 (Government Printer, Lusaka, 1985), p. 10.

118. Ibid.

119. Ibid., p. 65.

120. White, C.M.N., (1960), pp. 3-6.

121. Colson, E., (1966).

122. The term "unwritten" means in this context that it has not been comprehensively defined in any legislative enactment or judge-made law.

123. Two of the countries where customary law was restated are Kenya, Cotran, E., Restatement of African Law: Kenya (Sweet and Maxwell, London), 1968, and Malawi, Ibik, J.O., Restatement of African Law: Malawi (Sweet and Maxwell, London), 1970.

124. See Chapter One.

125. [1976] Zambia Law Reports, p. 304.

126. Ibid., p. 309.

127. Mvunga, M.P., (1982), p. 44.

128. Ibid.

129. Gluckman, M., The Ideas in Barotse Jurisprudence, op. cit., p. 78.

130. Frank, M.F., op. cit., p. 2. Other positive effects cited by Frank are the absence of land speculation by absentee landlords and of land accumulation by the financially better-off.

131. Yudelman, M., op. cit., p. 113.

132. Ibid., p. 111.

133. Ibid.

134. For this reason, Yudelman's proposition (p. 113) that market "pull-factors" have not been effective cannot be supported.

135. Goddard, A.D., "Land Tenure, Land Holding and Agricultural Development in the central Sokoto close-settled Zone, Nigeria", Savanna, 1972, 1, 31.

136. Runowicz, A., "Some Problems of Agricultural Development in Africa, South of the Sahara", Africana Bulletin, 1971, 14, 114.

137. Ibid.

138. UN FAO, African Agricultural Development, (Rome, 1966), p. 61.

139. Cohen, J.M., "Land Tenure and Rural Development in Africa", in Bates, R.H. and Lofchie, M.F., (eds.), Agricultural Development in Africa: Issues of Public Policy, (Praeger Publishers, New York, 1980), p. 354.

140. White, C.M.N., A Preliminary Survey of Luvale Rural Economy, (The Rhodes-Livingstone Papers, No. 29, Manchester University Press, Manchester, 1959), pp. 31-33; Mvunga, M.P., (1982), p. 24.

141. Benneh, G., "Rural Land Tenure Systems in Ghana and their Relevance to Agricultural Development", Seminar on Problems of Land Tenure in African Development, (Afrika-Studiecentrum, Leiden, 1971), p. 147.

142. UN FAO, Inter-Relationship Between Agrarian Reform and Agricultural Development, (Rome, 1953), p. 16.

143. Ngandwe, C., op. cit., p. 60.

144. Ibid. One might argue, however, that the financial limitation is itself the result of customary land tenure which, by not recognising the sale of land, prevents the use of land as security for loans.

145. Mitchell, J.C., "Preliminary Notes on Land Tenure and Agriculture among the Machinga Yao", Rhodes-Livingstone Journal, 1950, 10, 6-7.

146. Ibid., p. 7.

147. See Law Development Commission, Report on the Law of Succession, op. cit., p. 3.

148. Mutsau, R.J., "The Shona and Ndebele Settlements in Kabwe Rural Area: 1953-1963" in Zambia Land and Labour Studies, Occasional Papers, No. 2, 1973, (National Archives of Zambia, Lusaka, 1973), p. 41.

149. Ibid., pp. 41-47.

150. Ibid., p. 47.

151. Report of the Commission of Inquiry, 1982, op. cit., p. 117.

152. Yudelman, M., op. cit., p. 112.

153. Ibid., p. 113.

154. Cohen, J., op. cit., pp. 354-355.

155. Brietzke, P.H., "Rural Development and Modifications of Malawi's Land Tenure System", Rural Africana, 1973,

20, 53; see also, Brock, B., op. cit., p. 11; and Frank, M., op. cit., p. 2.

156. Land (Conversion of Titles) Act, 1975, s. 13.

157. Chapter Four.

158. In this context "parcellation" is meant the process whereby a holding owned by one farmer is split into a number of holdings operated by different farmers, and "fragmentation" is meant a stage in the evolution of an agricultural holding in which a single farm consists of a number of separate pieces of land often scattered over a wide area. These definitions are derived from the Report of the Mission on Land Consolidation and Registration in Kenya 1965-1966, Ch. IV, p. 7, para. 21.

159. Podedworny, H., op. cit., p. 105; see also Frank, M., op. cit., p. 2, Brock, B., op. cit., p. 17; Goddard, A.D., op. cit., p. 31.

160. Ibid.

161. Goddard, A.D., op. cit., p. 31.

162. Stromgaard, P., op. cit., p. 42.

163. Barnes, J.A., "The Fort Jameson Ngoni", op. cit., pp. 210-211.

164. Richards, A.I., "Land, Labour and Diet in Northern Rhodesia", op. cit., pp. 278-287.

165. Stromgaard, P., op. cit., pp. 44-46.

166. Cunnison, I., op. cit., pp. 16-18.

167. Ibid., p. 17.

168. Kaunda, K.D., Take Up the Challenge, op. cit., p. 47.

169. Ibid.

170. Report of the Commission of Inquiry into Land Matters in the Southern Province, op. cit., p. 56.

171. Ibid. Unless there is proof of abandonment, it is not possible for someone legally to acquire such land because customary law does not permit title by prescription.

172. Ibid., p. 117.

173. Interview with Choma local court officers, 12th March 1985 and Feni Multi-Purpose Co-operative Society, 29th March, 1985.

174. See Chapter Two.

175. Richards, A.I., 1939.

176. Kapika, K.K., "Land Tenure Among the Bemba in the Colonial Period", op. cit., in Zambia Land and Labour Studies Occasional Papers, op. cit., p. 36.

177. See Chapter One.

178. Cap. 315.

179. S.26(1)(2).

180. Republic of Zambia, Summary of the Main Recommendations and Government Reactions on the Report of the Commission of Inquiry into Land Matters in the Southern Province (Government Paper No. 2 of 1985, Government Printer, Lusaka, 1985), hereinafter referred to as the White Paper, p. 18.

181. Report of the Land Commission, 1985, op. cit., p. 127.

182. Ibid., pp. 127-128.

183. Minute dated 29th April, 1975, ref: M.R.D./101/51/3.

184. Memorandum dated 4th June, 1975, ref: L.A./11,101/200.

185. Letter dated 17th June, 1975 from the Acting Commissioner of Lands to the Permanent Secretary, Ministry of Rural Development, ref: LA/11,101.201.

186. Art. 6A(2).

187. S.5(1)(d).

188. S.5(7).

189. Art. 2(1)(a) and S.2(1)(b).

190. Art. 6A(4).

191. S.I. No. 117 of 1965.

192. G.N. No. 497 of 1964.

193. In fact no such law has been passed by the government.

194. S.5(1).

195. S.5(b).

196. Ibid.

197. S.I. No. 7 of 1964.

198. G.N. No. 497 of 1964.

199. Mvunga, M.P., (1982), p. 67.

200. Ibid.

201. Cap. 287 of the Laws of Zambia.

202. Cap. 293 of the Laws of Zambia.

203. Art. 6A(4).

204. S.5(2).

205. Commissioner of Lands, Memorandum on Land Administration dated 28th January, 1983, ref: LA/11,001/2; interview with the Deputy Commissioner of Lands, Lusaka, 10th April, 1985.

206. Republic of Zambia, Ministry of Lands and Natural Resources, Procedure on Land Alienation, LAND CIRCULAR, NO. 1, of 1985, op. cit., p. 2.

207. Commissioner of Lands, Memorandum on Land Administration, op. cit., p. 2.

208. A specimen or model layout plan which will be considered acceptable is annexed to the circular as "Annexure B".

209. Mvunga, M.P. (1982), p. 69.

210. Republic of Zambia, A Report of the Commission of Inquiry, op. cit., p. 119.

211. The White Paper, op. cit., p. 16.

212. Ibid., p. 16.

213. Interview with the Deputy Commissioner of Lands, Mulungushi House, Lusaka, 10th April, 1985. He proposes to request the Land Use Department of the Ministry of Agriculture and Water Development to make surveys and to report as to which land is being utilised and which is unutilised so that the latter can be made available to applicants.

214. Reg. 4(1) of the Reserve Grants Regulations, G.N. No. 497 of 1964, and Reg. 4(1) of the Trust Land Grants Regulations, G.N. No. 497 of 1964.

215. Ibid., reg. 4(3).

217. Ibid., reg. 5.

218. No. 9.

219. No. 14.

220. No. 11.

221. No. 7.

222. No. 4.

223. See the Land (Conversion of Titles) Regulations, S.I. No. 187, of 1975, Part III of the First Schedule.

224. No. 5.

225. Agricultural Lands Act, s.21(2)(b)(i).

226. No. 6.

227. No. 8.

228. No. 10.

229. See the discussion on the problems of the Survey Department in the Report of the Commission of Inquiry into Land Matters in the Southern Province, op. cit., pp. 121-122.

230. Land (Conversion of Titles) Act, No. 20 of 1975, s.22(c).

231. Mvunga, M.P., (1982), p. 69.

CHAPTER FOUR

AGRICULTURAL CREDIT FOR DEVELOPMENT

A. INTRODUCTION

The problems of the farmer do not only relate to security of tenure. The farmer must raise the capital that he requires to develop the farm. The issue of agricultural credit would not arise if all farmers had adequate funds to meet their investment requirements, but, in the majority of cases, this is not so. Farmers of all types, both commercial and small scale, do rely, to a greater or lesser extent, on some form of credit from various sources - commercial banks, co-operatives, credit or thrift societies and government specialised credit institutions. The issue, which has assumed great importance, not only in Zambia but also in other developing countries, is how to ensure that all types of farmers gain access to agricultural credit. In Zambia's State Land, credit is linked with access to land because, as shown in Chapter Two, the most crucial considerations governing the grant of consent to an assignment of agricultural land is whether or not the proposed assignee has the capital, at the time of the application for consent, to develop the farm.

In this connection, promissory letters from financial institutions proving that funds will be made available to the proposed assignee have played an important part in the determination of whether consent will be given or withheld.

The importance of agricultural credit to smallscale

farmers and subsistence farmers on customary land in Zambia has never been underestimated. The grant of leases and occupancy licences in the Reserves and Trust Land is meant to facilitate the use of land by rural farmers as security for loans from financial institutions. The demand for registered titles to land under customary land tenure, mentioned in Chapter Three, is further testimony to the consciousness of farmers of the relative advantage, in terms of access to credit, that statutory lessees on State Land enjoy over customary landholders in the Reserve and Trust Land.

The conviction on the part of government that peasant farmers are disadvantaged with respect to credit explains the importance that government has placed on its own sponsored institutional credit. From the time of independence, government has used various forms of arrangements to enable rural farmers to have access to some form of credit or other. Its first task after independence was to introduce amendments to the Land and Agricultural Bank Act[1] to enable the Bank to lend on the basis of forms of security that rural farmers could provide. The government then embarked on promoting the establishment of co-operatives and credit societies to mobilise rural savings and encourage financial institutions to lend to co-operatives on the basis of the mutual assurances of the members. From 1969, the idea of a credit institution owned by the State which could lend to small farmers, in particular, took shape in the form of the Credit Organisation of Zambia, and since then the country has, in the main been dependent on institutionalised agricultural

credit. In spite of what may be seen as a massive injection of loan funds into the rural sector, the performance of specialised credit institutions in the country, particularly, the defunct C.O.Z. has been so disappointing as to force the government to re-evaluate the role of credit in agricultural development in general and the commercialisation of peasant agriculture, in particular.

The result of this re-appraisal of the role of credit has been a more strict assessment of credit worthiness which, in turn, has improved the performance of the existing government credit institutions - the Agricultural Finance Company and the Zambia Agricultural Development Bank. The price, however, has been a shift in emphasis from the totally subsistence farmers to the small scale and commercial farmers. Zambia's experience with agricultural credit brings out one of the most serious problems facing governments of developing countries - the conflict between two important ideals. One of these ideals is to use credit to increase the output of the poorest farmers so that they contribute to the economic growth of the country. The other ideal is that in a country where there is competition for scarce resources by various sectors of the economy, credit should be given only to those with regard to whom there is little risk of default. While the government's goal is to develop agriculture, financial prudence dictates, however, the utmost circumspection in the use of credit. At the centre of this conflict in aims is the role of credit in the developmental process, particularly, where the government has limited resources.

This chapter begins with theories regarding the role of

credit, traces the historical development of Zambia's credit policy (including the emergence of co-operative credit and thrift societies), the role of the commercial banking sector and concentrates on structures and performance of the government credit institutions.

1. The Role of Agricultural Credit

A subsistence economy, that is, one in which each family consumes most of what it produces perpetuates its own poverty because poverty itself inhibits the acquisition of capital (goods) without which output cannot be raised. Two reasons have been suggested for this outcome:

> "On the one hand, to accumulate capital goods, men must set aside much of their time and effort for this purpose; but when people are very poor most of their effort has to be devoted to producing for consumption. In other words, acute poverty gravely retricts the ability and willingness of a subsistence community to save. On the other hand, communal poverty also weakens the incentive to accumulate capital goods or to adopt better methods of production. Once a family can produce sufficient of a particular type of crop or other output to meet its own needs, there is little incentive to strive to introduce more efficient methods of cultivation, husbandry or production, so long as other families in the community are too poor to barter for or buy any surplus product. A subsistence economy is, therefore, in a vicious circle; poverty keeps the community poor." [2]

The first reason in the above quotation would seem to imply that in order to increase the output in the subsistence economy funds must be provided by way of credit to enable farmers to purchase agricultural implements and so on. The

second implies that there must be an assured market for whatever surplus is produced in order to give farmers the incentive to produce more. The conclusion is, therefore, that in order to break the vicious circle caused by poverty, credit and markets must be made available.

There is general consensus that credit may play a significant, if not a decisive role in the productive capacity of peasant economies. There is, however, some controversy as to how much emphasis should be placed on agricultural credit as a stimulus to increased production. On the one hand, there are those who argue that credit, in the form of working capital, must receive first priority. On the other hand, others argue that credit per se is not desirable in the early stages of agricultural development. The quotation from Furness (above) would seem to support the former contention which has enjoyed widespread support. This support has come not only from economists in the developing countries themselves but also those in aid-donor countries as well. Among the earlier proponents of this view are the economists, Lewis who, in 1955 wrote "Farmers need much more capital than they can afford to save"[3], and Leibenstein who said in 1957: "If capital, labor, entrepreneurial ability per head, technical knowledge, and the credit facilities available increase, the income per head will rise".[4] This adherence to what Von Pischke has termed "the small farmer credit need creed"[5] is still discernible in more recent studies.

To take two further examples: Makings, whose emphasis was on developing countries in Africa, has explained the need as follows:

> "During the first stages of advancement it is difficult for an African farmer to save enough to provide adequate working capital out of his small surpluses. Capital formation can scarcely begin until he can increase his output whereas any sustained increase in output must call for working capital."[6]

And even more recently Uma Lele of the World Bank wrote (in an unofficial capacity):

> "Modernizing agriculture requires large infusions of credit to finance use of purchased inputs such as fertilizer, improved seeds, insecticides, additional labour, etc. ... Because savings in traditional agriculture tend to be relatively small at initial stages of development, increased demand for working and fixed capital must largely come from increased supply of credit."

He added:

> "Small farmers have meagre internal resources and, therefore, are most in need of production credit."[8]

The popular arguments, cited above, have come under increasing criticism. These criticisms have become more pronounced following the disappointingly poor performance of credit so far given to subsistence farmers in developing countries. Howse has suggested that the provision of agricultural credit to people with low income and poor educational background is "not generally warranted".[9] He disagrees with the argument that peasant farmers must have access to credit before they increase their productivity and thus their income. He asserts:

> "In my view credit is a privilege - not every one's right - and that privilege must be earned. The greatest need today is for a system that teaches peasant farmers how to develop by using the resources they already have and that gives them confidence in their own ability to affect their status in society."[10]

Howse attacks the basic assumption that the subsistence

community has no money. In reality, he says, there is money, and peasants can and must be taught to save some of their income to meet anticipated future expenditure. If people do not save money, he argues, the answer is not to give them credit as is often done by governments, but "to wean them off credit as soon as possible - if one is forced to give credit at all".[11] The solution to shortage of money for agricultural development is to encourage saving, for instance by creating savings clubs. From the pool of the clubs, members can benefit enormously because of the additional buying power that it brings.[12]

In his criticism of "the small farmer credit need creed", Miller states that the argument, although logical, makes the following assumptions which, frequently, are not justified:

1. That agricultural research has developed improved technology which is clearly superior to traditional methods.
2. That farmers have seen practical demonstrations of the new technology, understand it, and are anxious to use it.
3. That farmers have confidence that the fertilizer, seeds, pesticides, and equipment needed to adopt the new practice will be available in the villages at the proper time and in the amounts required.
4. That the necessary credit to purchase these inputs will be made available at the required time, and
5. That farmers have been assured there will be a market for the extra production at prices which will make the financial rewards of adopting the

> improved technology well worth the weather, biological and market risks involved.[13]

Unless, he says, these preconditions are met, extending credit to small farmers may do more harm than good by putting them in debt. In the light of the foregoing preconditions the role of credit is perceived not as the initiator of agricultural development, but as an "accelerator" of development. As Miller puts the argument, "On the other hand, where the proper conditions already exist or can be created, well-managed production credit can give agricultural development a strong boost by accelerating the rate of adoption of improved technology by farmers who would otherwise be prevented from using it."[14]

There seems to be general agreement, therefore, that agricultural credit is important to agricultural development. The controversy relates to the stage at which credit must be introduced. There is little doubt that institutional credit has been and is being provided on the assumption that the subsistence farmer has insufficient resources to purchase inputs, and therefore, to start him off, credit must be extended to him. If this assumption is true, then there would appear to be little alternative for any government which is committed to improving the lot of its people, for, although agriculture is for the peasants a way of life, it is also a business, and as such cannot be carried on, much less expanded, unless capital is made available.[15] Yet it may be argued, as does Penny, that in fact, peasants do have some savings, albeit meagre, and what is required is to mobilise these rural savings through savings clubs which can lend its members the money they

need. The role of such savings clubs, commonly known in Zambia as thrift societies is discussed elsewhere, but it may be pointed out here that they have never had adequate funds to fulfil their obligations to their members and they, too, have had to rely more on external credit, that is credit from large co-operatives and from the government lending institutions. In order to assess the possible extent of rural savings, a survey carried out by the Rural Development Studies Bureau of the University of Zambia on rural incomes must be examined.

The survey covered all the provinces (except the North-Western Province) and took a sample of 683 households.[16] On the basis of their annual incomes, the households were classified into four groups. Group one, which consisted of forty-one percent of the households, was the most deprived, with average earnings from crop production of only six kwacha per annum. This group also suffered from periodic shortages of food. Group two, regarded as typical of the subsistence household and constituted thirty-six percent of the number of households interviewed, had an average household income of forty kwacha. The third group, which constituted fifteen percent, had an average income of K155. However, some of this income was derived from other sources, such as part-time wage employment. The only category which can be said to be better-off is group four, but it only constituted nine percent and the average earning was still less than a thousand kwacha per household per annum. The general picture that emerges is that more than three-quarters of the rural households have less than fifty-kwacha per annum.

Although the survey was conducted roughly ten years ago, owing to the worsening of the economic situation in the country, the position of the rural household could not have improved. Consequently the conclusion must be that as far as Zambia is concerned, the vast majority of rural peasants do not have any worthwhile savings.

The next consideration, however, is whether or not, in view of proven rural poverty, agricultural credit is the answer. In the past, particularly during the pre-independence era, when, as a matter of general policy, credit to subsistence farmers was non-existent,[17] some subsistence farmers were able to increase their production and even be regarded as a threat to the commercial sector, without having to rely on credit from any source. This factor has led to the conclusion that production becomes one of the criteria to be considered before the dispensation of loan funds. In fact, the argument that credit is merely an accelerator follows from the premise that credit is not useful and must not be given to those who do not already show initial productivity. Production as a criterion has a lot to commend it since it shows a positive response to existing opportunities. However, it is also the case, at least in Zambia, that the subsistence farmers who increased output were to be found in areas which were comparatively better served with marketing infrastructure, for instance the old line of rail and the main road networks to the Eastern and Northern Provinces. Moreover, even where the infrastructure exists, differences in circumstances such as the presence of the tse tse, pests and soil fertility may account for low productivity whether of livestock or crops.

As a general rule, therefore, the "productivity-first" criterion is unsuitable since it will merely re-enforce existing inequalities caused by locational and ecological differences. Nevertheless, all things being equal, the "productivity-first" criterion does serve to eliminate the least deserving farmers from receiving credit. This is all the more important in Zambia because, as the survey indicated, the households in group one (with the least income per capita) were more handicapped by shortage of labour resources arising from migration to urban areas, than any other cause. Credit to this category would constitute an unnecessary burden until such time as the households in it have adequate manpower to make optimum use of loan funds.

In view of the foregoing, it is difficult to dispute De Wilde's observation that a proper assessment of the role of credit is difficult because experience has shown that while excessive credit acts as a disincentive with the farmer working less and saving less, there are cases, however, where efforts of farmers have been frustrated because, although they are doing their best, they have had no access to credit.[18] Noting that Africans have been able to save to purchase what they want, De Wilde prescribes that a good system of agricultural credit must seek to encourage and supplement production efforts and savings, but he adds:

> "This does not mean that farmers can or should invariably be expected to produce some savings as a condition for receiving credit."[19]

Savings, as a requirement, cannot be applied to all farmers because there are some farmers whose production is very marginal on account of factors such as inadequacy of land, infertility of the soil etc.[20] Due to what may be termed

locational and ecological contrasts, De Wilde divides subsistence farmers into two categories:[21]

1) Those who have started developing their farms without credit but no longer find their savings adequate to defray rising development costs; and
2) Those who have had little chance to acquire for themselves the resources required to escape from the bind of subsistence farming but have the opportunities and will do so provided credit is made available.

The first, he says, are likely to make the most productive use of credit as long as their incentive to save is not impaired. The second can be helped only at considerable risk because the potential for higher output is likely to be less certain and capacity for repayment correspondingly less. He urges credit to this category to be made available in order that the fruits of development be widely shared, but the credit given must be more cautious to avoid serious losses.

De Wilde offers an admirable synthesis between those who would extend credit to all and sundry and those who regard credit as a privilege deserved only by those who can show that they have already produced surpluses from the sales of which they have been able to save. In the Zambian context and on the basis of the survey of rural incomes groups one and two would come within De Wilde's group one, while group three of the survey would fall under De Wilde's group two. The survey's group four would not qualify under De Wilde's credit worthiness policy because it would not have the opportunity to develop in spite of credit due to manpower constraints.

2. The Case for Specialised Credit Institutions

Specialised credit institutions have become a feature of agricultural development planning in many Third World countries. These institutions have been preferred to others or to supplement others such as informal markets or co-operative credit societies. Where there are surplus funds in the hands of people who do not have an immediate use for it, such funds might be lent to those in need of investment capital, thus developing an informal credit market. The development of an informal credit system, however, takes time, particularly in an economy where the majority are subsistence farmers and even the use of money as a medium of exchange is relatively recent. Moreover, Third World governments are reluctant to encourage any development which may result in the heavy indebtedness of small scale farmers to individual money lenders who may exploit them.[22] It is suggested that once this danger is recognised, it should be possible to control the development of local markets for funds in such a way as to avoid the exploitation of smallholders.[23] Co-operative credit, where the co-operative is also involved in marketing, is an improvement over individual money lending provided it charges realistic interest rates.

The advantages of using locally based institutions such as individual traders and co-operative societies are said to be the easy access to local views on the personality of the applicants, and the potential profits from investments, both

of which factors lead to the efficient selection of borrowers. Other advantages are that they have easy access to information regarding the use to which money is being put, the performance of the enterprise, and the case for leniency in the event of repayment difficulties. In the case of co-operatives, they have the added advantage of being able to apply sanctions. A loan from a co-operative society to any of its members creates a joint responsibility on the members of the co-operative to exert pressure to recover it, as it is in the interests of the members that the co-operative continues to be economically viable.

In an appraisal of locally based institutions such as co-operatives in Kenya, Heyer[24] notes the above advantages but goes on to point out some disadvantages which should also be considered. One of the dangers she sees in the use of local institutions is that they are open to local political influence, and hence, may find it difficult to refuse loans to influential members of the community or to insist on repayment from influential borrowers when repayment falls due. In spite of these dangers Heyer argues that there are ways of avoiding such problems, for instance by regulating the size of individual loans to avoid a major proportion of the funds being used for one or two influential people. Her conclusion on the point is that in view of the advantages that local institutions enjoy over more bureaucratic institutions, they should be encouraged to develop, albeit, under supervision and safeguards.[25]

While co-operative credit and individual lenders should be encouraged as suggested by Heyer, the view that there is a need for a specialised credit institution enjoys

widespread support. Indeed for countries in East, Central and Southern Africa where "well-articulated village money markets" are not as common as in most parts of West Africa, there seems to be little else that a government can do.[26] Hence the observation by the Rural Economic Development Working Party in 1960:

> "The development of the rural agricultural and minor industries will require a large injection of capital. The African producer cannot provide it. There must, therefore, be credit institutions to provide both long-term finance and seasonal credit."[27]

This argument not only highlights the role of agricultural credit, but also the view that a specialised lending institution serving a given group of farmers is the panacea for rural poverty. The appeal of a government credit system to both farmers and government officials is not difficult to see. The fragmented capital market which existed at the time of independence did not supply the amount of credit needed or on the terms which would permit farmers to modernise their farming methods. Furthermore, in the past, existing formal credit institutions such as commercial banks have shown little interest in serving agriculture, especially the small farmers.[28] Where they have extended credit, it has been to commercial farmers who are able to provide collateral security. For instance, the establishment of the Land and Agricultural Bank with the purpose of lending on the security of land served mainly the commercial farmers who had registered title to land while the subsistence farmers who did not, were excluded. This concentration on the category of farmers who are actually better-off leaves the emergent and subsistence farmers

without assistance.

The most important reason for the indifference on the part of commercial banks is that lending to rural subsistence farmers is a very risky undertaking. The absence of advanced techniques in the production process means that productivity depends not only on the efforts of the individual farmer, but also other factors such as favourable weather conditions. There is no assurance that the inputs that are used will necessarily increase output, as drought, which has of late been persistent in Africa, may put paid to the farmer's expectations. Equally important is the level of education which has an effect on the ability of the farmer to apply the inputs efficiently. Other discouraging factors are the price risks and the high costs of making and collecting small loans to numerous subsistence farmers scattered in various parts of the country. The risks attending the provision of credit to subsistence farmers has resulted in commercial banks shunning this category of farmers. This fact is evident from the paucity of rural branches of commercial banks, whose attention is focussed on more predictable business enterprises. Since the commercial banks will not be drawn into lending to individual rural farmers, it is argued that it is the responsibility of government to invest in rural development, the major part of which is agricultural development.[29]

Other arguments in favour of the government taking a leading role in the provision of agricultural credit are that a government lending institution could be used to test new credit arrangements on a trial basis, leading to the adoption of those that prove successful and the

discontinuance of those that are not,[30] and the importance of informed assessments of credit need and the general necessity for advice, direction and supervision in credit use.[31] Extrapolating on the last point Makings says:

> "Governments have the administrative network covering the geographic field over which credit must be spread, enabling facilities and services to be provided at less cost than could be approached by a non-government organization. It is part of the functions of governments to raise funds for development purposes not sufficiently attractive for private enterprie, or not commercially viable in the early stages. And, more particularly, the agricultural extension services with which successful credit provision must be closely linked at this level, are government services."[32]

The characteristic features of specialised agricultural lenders differ substantially from non-specialised financial institutions. Bourne and Graham describe some of these as being a large degree of supervisory and technical involvement in the production activities of their borrowers, a project approval approach to granting loans, different performance criteria than commercial banks, and different skill requirements for their staff.[33] Other features are that these institutions rely on loans and grants from the government and avoid providing deposit facilities to the public. They are, therefore, unable to mobilize rural savings to increase their financial resources. The absence of deposit facilities means these institutions do not realise the potential multiplier effects that arise when borrowers deposit loan proceeds with the lending institution, thus increasing its supply of loanable funds. The lack of deposit facilities is not because they are too costly, but that "deposit costs require more realistic loan

pricing and more careful lending policies".[34] It is much easier for managers of specialised agricultural credit institutions to obtain government funds cheaply and thus avoid competition with commercial banks for local funds. This type of arrangement, argue Bourne and Graham, reduces the responsibility of financial managers, whereas resource mobilization from many depositors introduces considerable pressure for accountability to the investors.[35]

A more controversial feature of specialised credit institutions is the comparatively low interest rates. Low interest rates stem from that theory of the role of credit which emphasises supply-leading credit as opposed to demand-leading credit. This theory, expressed by Von Pischke as the "credit need creed" has been discussed above, its basic theme being that the availability of credit, even in advance of demand for it, will encourage farmers to adopt new and advanced farming techniques. Other reasons for cheap credit are equitable in character. Farmers need to be compensated for their losses from government price ceilings on food products (which largely helps consumers in urban areas).[36] The problem of what interest rates should be charged is still a subject of debate for the reason that interest rates play a number of different roles.[37] One approach that does not involve crippling the operations of credit institutions would appear to be to subsidise agricultural inputs such as fertilizer and other chemicals required by farmers. This would be easy where the marketing bodies also provide the inputs and are government-sponsored.

Low interest rates have attracted considerable criticism. It is said that low interest rates encourage the

use of loans by farmers for non-productive purposes because they do not have to put into the farm a great deal of effort and investment to make the farm pay for its improvement.[38] Another criticism is that low interest rates increase the demand for credit, and if, as is usually the case, demand exceeds supply, some kind of rationing will be necessary. In any system of credit rationing, the allocation of credit will be more concentrated on those farmers who are relatively well advanced so as to avoid unnecessary risk. Such an approach will not only leave out the majority of subsistence farmers for whom credit from specialised institutions is crucial, but also have the effect of reinforcing the existing inequality in economic standing among farmers of different categories.[39] Adams has observed that according to recent studies the lower the real rate of interest the more heavily concentrated will be the loans in the hands of relatively few people.[40] On the difficulty of detecting this trend, Adam says:

> "This fact may be masked by formal lenders who make a number of small loans to the poor and multiple large loans to wealthy borrowers. The modest average size of loans and the large number of loans made hide the fact that relatively few people receive most of the benefits from cheap credit. This is not due to a conspiracy. The self-interest of each lender combines with the excess demand that exists for negatively priced loans to force lenders to ration funds to their most profitable and powerful customers."[41]

Credit rationing itself causes major difficulties. It places an extra burden on the administrative staff of credit institutions and due to pressure from prospective borrowers, a situation develops where the chances of corruption increase and staff morale recedes. There is also the danger

that a credit institution lending money at a very low interest rate is at the mercy of government and may find itself insufficiently compensated. In the circumstances it may be forced to decapitalise, in addition to concentrating on large loans to established farmers.

In its report submitted in 1960 to the Northern Rhodesia government, the Rural Economic Development Working Party came up with some illuminating observations. While conceding the need for a specialised credit institution it recommended that credit be provided on commercial terms. Subsidies, the Working Party said, could be necessary to help the agricultural industry onto its feet, and such subsidy could take the form of freeing the producer from payment of interest on his borrowed capital, but such subsidy ought to be paid by the government to the credit institution.[42] The government was urged not to confuse the separate issues of credit and subsidy by setting up credit schemes to grant interest-free loans to producers. There were two reasons for this:

> "Firstly any measure of interference with normal economic forces should be separately planned and applied, and then only as and when it is required. Such interference has the characteristics of a narcotic. Properly applied ... it can produce valuable results. Indiscriminately applied it can be harmful and habit-forming. It misleads the Government and the producer and gives them a false sense of economic success."[43]

The second reason was that the combination of credit and subsidy would leave the government perpetually as sole provider of credit since commercial banks could not enter a field where sub-economic rates applied. The government would not be able to provide enough capital from its own

resources, and even if it could do so, it would be tying up its own money unnecessarily at the expense of projects which could only be financed by itself. From this arose the conclusion that:

> "... While the Government must at present provide credit facilities for rural economic development and most if not all of the capital, it must do so in a way that will encourage private capital participation, not forgetting the individually small but cumulatively large savings of the rural Africans themselves."[44]

From the above arguments, the Working Party had in mind the establishment by the government of a credit institution whose sole business would be to lend money to the agricultural sector, but run purely on commercial lines and not as part of normal government business.

Makings sees the role of the State in the provision of credit as one of the most important questions which has faced emergent African countries. The question is whether the State should take over the responsibility for supplying credit and, if so, the extent of its commitment. A State might aim to provide the whole of the direct credit needs of the agricultural industry as far as it was practicable, or it might aim at providing supplementary credit at the level at which commercial bank credit is not available. In his view "it is in the national interest for a government to make credit available to the industry to an extent sufficient to offset any marked disability the industry may have in obtaining commercial credit, but if government credit is provided on a scale or at a level which competes with commercial credit there may be some waste in resource use through faulty direction".[45] Makings would, therefore,

conceive the role of government as a residual provider of credit to specialised institutions which would charge interest rates which compete with those of commercial banks. In this way the commercial farmers would have a choice between government credit or commercial credit. At the same time, it is hoped, commercial banks would be afforded a fair share of the credit market in the agricultural industry.

On balance, it would appear that despite the problems which have been encountered by specialised credit institutions, there is still a need for them, if only to serve that sector of the agricultural industry which does not have easy access to commercial credit. The difficulty would appear to be the low interest rates. The argument that the effect of low interest rates is to reduce the participation in the credit market of the commercial banks does not necessarily stand up to scrutiny. History has shown that even before the establishment of specialised credit institutions, commercial banks took little notice of agricultural growth among emergent farmers. This is evident from the paucity of rural branches. It is not only the interest rate which motivates the commercial banks, it is also the nature of security. However high the interest rates charged, where there is no security for the loan commercial banks will be loath to invest in the enterprise. Even where security is good, it may still be necessary to create an institution to serve agriculture, a factor that explains the emergence of land banks in colonial Central and East Africa. These land banks were established because commercial banks did not lay as much emphasis on the agricultural sector as they did on other sectors.

3. The Historical Development of Zambia's Credit Policy

The historical development of Zambia's credit policy is of vital importance for three reasons. The first of these is that it shows the aspects of lending policy introduced by the colonial government which have continued to enjoy support in the post-independence era, for instance the need for a specialised credit institution which must serve agriculture and related industry. The idea of specialised credit institutions is a legacy of colonial agricultural credit policy whose brain-child, the Land and Agricultural Bank, continued to operate for a period of three years after independence. The second reason is that a historical perspective will reveal the evolution of the idea of local participation in the process of loan grants. The expression "local participation" is used to mean the role played by the ruling Party's functionaries at village and district level in recommending to government credit institutions those applicants who are credit worthy, thereby, influencing the decisions of the lenders. Since these functionaries are the elected representatives of the villagers or constituents, their role is seen as actual participation by local people in the determination of loan eligibility. The third reason and perhaps the most important is that the history of agricultural credit in Zambia, perhaps more than in any other country, explains, to a large extent, the gradual tightening of lending policy which is taking place.

(a) Summary of Credit Infrastructure at Independence

At independence agricultural credit was available from five co-operative credit associations (covering the Copperbelt, Southern, Central, Eastern, Western and North-Western Provinces), the Land and Agricultural Bank, the Ministry of Agriculture, and the commercial banks.[46] The Ministry of Agriculture and the commercial banks were largely responsible for loans to expatriate farmers. The multiplicity of government financed credit sources not only constituted a burden on the officials who administered credit, but also led to overlapping. Some farmers were, consequently, without assistance. Following the recommendations of the United Nations Survey Mission (UN/ECA/FAO) in 1964 a committee was appointed to study the simplification of the system. In 1965 the committee recommended that the Land and Agricultural Bank be responsible for all credit but that operations be channelled through the outlets of all the established agencies. At the same time, the Credit Organisation of Zambia was set up to provide credit mainly for the emergent and subsistence farmers in provinces off the line of rail. The continuing confusion over credit sources and administration led to a decision to scrap the provincial credit institutions. As a further boost to administrative efficiency, the posts of manager of the Land and Agricultural Bank and the Credit Organisation of Zambia were held by a single man. The First National Development Plan provided for increased government credit for agriculture and also emphasised the importance of

enforcing credit-repayment. It also called for increased involvement of commercial banks in agricultural credit. The simplification of the administrative system proceeded until by 1968, the Credit Organisation of Zambia was the sole source of government credit for farmers.

(b) Adaptation of the Land and Agricultural Bank

The structure of the Land and Agricultural Bank, (hereinafter referred to as the "Land Bank"), has been covered in Chapter One. What falls to be discussed here are the measures carried out after independence to adapt the bank's lending policy to the changed emphasis from reliance on commercial farmers to the encouragement of emergent farmers. By simply making changes to the operation of the Land Bank, it may be assumed that the government accepted the idea of a specialised credit institution, and all that was required was to adapt it so as to serve a much broader section of the farming community. These changes took the form of broadening the range of farmers to be served by amending the definition of "farmer" under the Land and Agricutural Bank Act, introducing a completely novel idea of decentralisation of operations of the Bank by establishing District Advisory Committees, and thirdly, introducing a new provision regarding the grant of unsecured loans. It is also important to comment on the provision regarding interest rates as these provisions, which remained intact long after independence until the Bank was dissolved in 1967, clearly show the role that specialised credit institutions were meant to play.

So far as agricultural development was concerned, it was the business of the Land Bank to lend money to farmers, co-operative agricultural societies, farmers' associations or unions, agricultural show societies or other agricultural bodies "for any purpose which is, in the opinion of the Bank, likely to further the interests of the farming industry".[47] But the statutory definition of "farmer" clearly excluded subsistence farmers and, therefore, the majority of African farmers. Under section 2 a farmer was defined as:

> "... a person who devotes his attention to farming in the territory either exclusively or together with some profession, business or other occupation for his own profit."

The expression "for his own profit" would seem to exclude subsistence farmers. Because of this limitation few African farmers could qualify and the only way the Land Bank could assist in promoting peasant farmers was by lending to rural credit societies, themselves defined as "a society formed by a group of small peasant farmers in order to provide short-term or seasonal credit where such credit could not normally be obtained".[48] African farmers who were not members of rural credit societies could not benefit and since there were not that many African rural credit societies at that time, African farmers were not adequately served by the Land Bank. By an amendment to the Act made in 1964, the range of farmers to be served by the Land Bank was broadened to include subsistence farmers, so that the definition of farmer read:

> "... a person who devotes his attention to farming in Zambia, either exclusively or together with some profession, business or other occupation <u>and includes a person who normally produces crops in quantities</u>

> sufficient only for the subsistence level use of himself and his family or, from time to time, produces a surplus of such crops in quantities sufficient to enable him to sell such surplus for his own profit."[49] (emphasis added).

The underlined words were added to the definition to achieve the desired effect.

The mere inclusion of subsistence farmers in the category of farmers eligible for loans by way of amendment would not have been sufficient. The Land Bank granted loans on the basis of security that had to be made available by the borrower. Among the kinds of security that were permitted were a mortgage of land within Zambia, an informal charge evidenced by a memorandum which should be registered in the Lands and Deeds Registry, stop orders on crops or other produce, bills of sale, and any other security approved by the Board.[50] It might be thought that stop orders as security could have been afforded by African farmers; however, only those farmers who were not subsistence farmers would have been able to make use of stop orders. The reason is that although a stop order affects future produce, the Land Bank would only accept such a stop order where there was evidence that in the past years the farmer had been in the habit of selling, at least part of his produce to a marketing body. In this way the Land Bank would be able to decide whether the farmer was in a position to produce sufficient to repay the loan. If the farmer only produces enough for himself and his family, the value of a stop order is doubtful, for, there is no evidence that the farmer is capable of producing a surplus. In practice, the stop order system supports the production-first and

credit-later theory. In order to permit the widest possible range of farmers who could borrow from the Land Bank, the government inserted section 33A which permitted the Bank "subject to such general and specific directions as may be made by the Minister [to] make loans without security to such farmers or classes or groups or types of farmers as may be specified by the Minister." The most serious flaw in this provision was that it left the initiative of not insisting on security to the Board of the Land Bank itself. The Minister could not, as part of government policy, direct the Land Bank to drop the requirement of security. A Land Bank which had been in operation for twelve years, transacting business on the basis of mainly fixed assets and land as security could not be expected to take the risk of lending on no security at all. It is, therefore, hardly surprising that the Bank never availed itself of this provision.

In addition to broadening the range of eligible farmers and permitting the grant of unsecured loans, the government also introduced District Advisory Committees as part of the organisational structure of the Land Bank. The establishment of the District Advisory Committees might be interpreted or understood as an attempt to enable the participation of the local communities which are to be served, in the loan dispensation process. It might, however, be an attempt to decentralise the decision making process in so far as, in some instances, the District Advisory Committee could approve loan applications. There is some advantage to be gained in a policy that not only results in decentralisation, but also in local

participation. Decentralisation of the operation of specialised credit institutions enables decisions on applications to be communicated easily and loan funds released with minimum delay, factors which are crucial for farmers who need the money on time to buy inputs for immediate application. Local participation ensures that those who grant the loans are very familiar with the circumstances of each individual applicant, and also that the people who are being served regard the Bank as accessible and helpful rather than a complicated and bureaucratic institution.

The Minister was empowered to establish by order in the Gazette such number of District Advisory Committees as he deemed necessary.[51] The order would specify the area within which the committee was authorised to exercise its functions. District Advisory Committees consisted of a chairman and such other members as the Minister deemed expedient. Board members of the Land Bank could be appointed as members of the District Advisory Committees.[52] The Minister specified the period for which a member of the committee could serve but any member was free to resign after due notice, in writing, to the Minister. The Minister was also empowered to remove a member from office if such member was unfit to discharge his functions, or was adjudicated bankrupt or had made a composition with his creditors. He also had discretionary power to remove any member from office for any reason he deemed sufficient.[53]

The function of the District Advisory Committee was to consider applications submitted by farmers who were themselves compelled to submit their applications to the

committee, where one existed, instead of sending them directly to the Board of the Land Bank.[54] District Advisory Committees were not, however, competent to consider applications submitted by co-operative societies.[55] After considering the applications submitted to it by farmers, the committees had to forward the same to the Board together with recommendations as to which applications should be approved.[56] The Bank, however, had a discretion either to grant or refuse any application notwithstanding the recommendations of the committee.[57] This procedure helped to check any local biases as all records pertaining to the deliberations of the District Advisory Committees were available to the Board for scrutiny.

The functions of the committees did not stop at the advisory stage, however. There was provision for the Board to extend the powers and duties of the committees. The Board of the Land Bank could authorise the committees to grant loans without reference to it, but such authorisation was not to extend to the grant of loans to agricultural co-operative societies which included rural credit societies.[58] In the event that a particular committee was authorised by the Board to make loan grants, it was up to the committee to grant the same without referring the application to the Board. But, still, records of such loan grants were to be made available to the Board for inspection. It is doubtful, however, that the Board would have authorised large sums to be loaned without its approval. It is more than probable that where the Board authorised the exercise of this power by any committee, it would restrict the quantum of loan funds, and also the

period for which the loans would be made. Seasonal loans are more fitting for committees at district level to deal with than, say, medium term or long term loans.

One other measure introduced by the new government related to interest rates. Under the original provisions of the Land and Agricultural Bank Act, the interest to be charged was: not to "be less than [was] sufficient to cover the average rate payable by the Bank on the funds mentioned in sections nineteen and twenty" of the ordinance and the costs of administration including provision for losses.[59] Sections 19 and 20 related to the sources of funds for the Bank. The major source of the Bank's funds was the government which through the Legislative Council vote dispensed loans to the Bank at an interest that was determined by the Financial Secretary (who after independence became the Minister of Finance). The Bank was, however, authorised to raise funds by discounting with other banks bills of exchange of co-operative agricultural societies; overdrafts from other banks; acceptance of monies on deposit; and any other method which would meet with the approval of the Minister. The amendment of 1964 stated:

> "The Bank may, with the approval of the Minister, charge a rate of interest lower than that specified in subsection (1) of this section. In such case the amount by which interest at the rate charged falls short of the provisions of subsection (1) of this section shall be paid to the Bank from moneys appropriated by Parliament for the purpose."[60]

This provision thus permitted the subsidisation of interest rates at the request of the Land Bank and with the agreement of the Minister. It would have had the same effect as the charging of a rate lower than the commercial rate, which in

turn is said to discourage lending by commercial banks.

(c) The Credit Organisation of Zambia

The Credit Organisation of Zambia which in 1967 replaced the Land and Agricultural Bank, had begun its operations in 1965, in spite of the fact that it did not exist in statutory form. It had a very short and disastrous life, being wound up in 1970, with an accumulated loss of twenty million kwacha.[61] An examination of the structure and operation of the Credit Organisation of Zambia, best known as the COZ, is relevant to the determination whether any lessons have been learnt from its brief existence. The COZ assumed statutory form on the 11th of August, 1967 when the Credit Organisation of Zambia Act[62] was passed. In terms of structure, the COZ was very similar to the Land Bank, but it had certain other features which were different from the Land Bank.

(i) Organisational Structure

The Organisation had a similar structure to the Land Bank except in terms of numbers. It was headed by a Board consisting of not less than nine or more than twelve members appointed by the Minister, by Gazette notice.[63] Members of the Board were to serve for a term not exceeding two years.[64] Among the members of the Board, the Minister appointed the chairman. He also appointed a General Manager who was also a member of the Board. A retiring member was, however, eligible for re-appointment. A member ceased to be a member of the Board if he died, resigned, was adjudicated

bankrupt or of unsound mind, became convicted of an offence and sentenced to imprisonment without the option of a fine, or absented himself from three consecutive meetings of the Board without its leave.[65] Unlike members of the Land Bank Board, members of the COZ Board did not cease to be members on becoming members of the National Assembly.[66]

As with the Land Bank, the Minister could appoint such a number of District Advisory Committees for the COZ as he "deemed necessary or expedient".[67] Such an appointment was made by order published in the Gazette. District Advisory Committees consisted of a chairman and such other members as the Minister deemed necessary. All the members were appointed by the Minister. In fact the usual number of members appointed was five, including the chairman. The format of the order in the Gazette did not, however, disclose the status of those appointed or the positions they held within their community.[68] This can partly be attributed to the fact that the Credit Organisation of Zambia Act did not prescribe what qualifications appointees to the District Advisory Committee should have. The consequences of this omission is commented upon below, in connection with the performance of the COZ. The other provisions relating to the District Advisory Committees were a replica of the provisions regarding the same in the Land and Agricultural Bank Act, and, therefore, need not be repeated.

(ii) <u>The Objectives of the COZ</u>

The objectives of the COZ were different, to a certain degree, from those of the Land Bank. In common with the

Land Bank, the COZ's business was to lend money to farmers and co-operative societies for various purposes. Both the Land Bank and the COZ could also lend money to farmers' associations or unions, agricultural show societies and other bodies for purposes which, in the opinion of the COZ or the Land Bank, would further the interests of the farming industry. In contrast to the Land Bank, however, the COZ had an additional object:

> "to lend money to establish, purchase or improve commercial and other business projects approved by the Organisation."[69]

The contrast, therefore, lies in the fact that whereas the Land Bank had been established purely for agricultural purposes, the COZ had a dual role of serving both the agricultural sector and the commercial sector. Much of the appraisal of the COZ which has taken place since its dissolution seems to have focussed on the performance in relation to agriculture but not commercial business enterprises unrelated to agriculture, perhaps because the emphasis of the COZ appeared to have been on the farmers rather than businessmen.

Having thus altered the objects of the COZ, the provision regarding the purposes for which a loan could be made had to be correspondingly extended. Generally, a loan could be made by the COZ (and before it the Land Bank) to a farmer or any other person, "for the purchase, development and improvement of land, [and] the commencement or carrying on of farming operations generally". Under the Credit Organisation of Zambia Act, however, the provision was extended to include "the purchase, establishment and improvement of any business or commercial enterprise

approved by the Organisation".[70] To define further the nature of loans to commercial business, subsection 3 of section 29 stated:

> "(3) A loan may be made by the Organisation for -
> a) the promotion, purchase or improvement of any business such as that of merchant, trader, dealer, storekeeper or agent for the sale of or for dealing in natural or manufactured goods, materials, provisions and produce;
>
> b) the development, establishment and carrying on of any enterprise, such as that of builder, contractor, cabinet maker, fishery pit sawyer, transport contractor, upholsterer, shoe repairer, and generally to do all such things as are incidental and conducive thereto."

The motive behind the extra responsibility given to the COZ was to equip it with the necessary power to cope with the economic reforms which were announced by the President a year after the Credit Organisation of Zambia Act was passed. In 1968, the President introduced his first economic reforms, the extent of which was to restrict the running of business by foreigners, particularly in the rural areas. Even in urban areas, however, the grant of retail licences was to be restricted to nationals, and those foreigners already in the retail business were encouraged to sell their concerns to Zambians.[71] This could not work if Zambians could not find the resources with which to acquire the retail businesses. For this reason, the COZ's objects had been extended to lending for purposes of commercial enterprise. The effect of extending the objects was to increase the responsibility of the COZ in relation to its resources at a time when rural development, which had,

hitherto, been largely neglected, should have had priority.

The COZ could grant loans on the same kinds of security as the Land Bank - mortgages, charges, bills of sale, and any other security that could be approved by the Board, except that whereas under the Land and Agricultural Bank Act stop orders could only be made on crops and other produce, under the Credit Organisation of Zambia Act, stop orders could be made on bank accounts.[72] Apart from these changes the Credit Organisation of Zambia Act was a replica of the Land and Agricultural Bank Act, save for minor alterations necessary such as currency, numbers of Board members and the layout of sections.

(iii) Performance of the COZ

The COZ was established to fill a gap which had not been covered by the Land Bank because of its insistence on tangible security such as land, or by the commercial banks, whose lending to the agricultural sector had been minimal. It was not a clearly thought-out model to achieve its objectives, the fact that it had begun operation two years prior to its being formally established by Act of Parliament being an indication of the haste with which it was founded. In its early years, care was not taken to consider the important aspect of credit-worthiness - the application form for a loan went little beyond enquiring the type of crop and the acreage to be planted. No arrangements had been made, at least before the COZ assumed statutory form, with marketing agencies for the repayment of money owed to the COZ from the farmers' sales to them.[73] In some cases, no attempt was made to keep a record of borrowers' names and

addresses - a fact which is borne out by the fact that the COZ was unable to produce such a basic statistic as the actual number of borrowers,[74] let alone audited accounts.[75] This omission was itself a result of poor accounting procedures and a chronic shortage of trained staff.[76] By the end of 1967 the total amount lent to the COZ had reached K18.8m,[77] and by 1968 this figure had risen to K19.7 m.[78]

In 1969 the COZ was transferred from the control of the Ministry of Agriculture to the Ministry of Finance, which led to a noticeable hardening of lending practices, but with the repayment levels of thirty percent, the greater proportion of which could be accounted for by commercial farmers, these changes were too late to save the Organisation.[79] Introducing the Credit Organisation of Zambia (Dissolution) Bill of 1970, the Minister of Rural Development told the House:

> "Regrettably as hon. Members will be aware, the volume of outstanding debts not repaid by farmers has reached alarming proportions, now of the order of eight million kwacha, and it is now necessary for Government to bring the whole problem of agricultural credit on a firmer and more rational basis."[80]

Considering the repayment rate, the eight million kwacha figure must have been an underestimate, but according to the Minister the COZ had served its purpose. He went on:

> "I am being frank with the House when I say that I do not regard the Credit Organisation of Zambia as having been a failure; it has performed far too valuable a function in difficult conditions to be placed in that category. But what we now need is a new appraisal, a new approach, and new attitudes from the farming community, and it is intended that this winding up process will mark a new phase along these lines and we will have what is in effect, a new era in the availability of agricultural credit in this country, based on realistic considerations."[81]

According to the Minister, therefore, what was needed was a re-shaping of lending policy. This did not, however, prevent attacks on the government by members of the opposition who argued that the COZ's failure had been caused by government using it to gain political support. There might have appeared to be some justification for this as government did little to recover loans from defaulting farmers. This policy in turn, tended to penalise those who had dutifully repaid their loans.

Much has been said regarding the effect that the operation of the COZ may have had on the attitude of peasant farmers towards credit. The appointment of members of the ruling party, the United National Independence Party (UNIP) to the District Advisory Committees, although meant to enable local participation, in fact had the effect of introducing political bias in the dispensation of loans. Many borrowers regarded their loans as grants for their loyalty to the ruling party, hence their perception that they were not contractually bound to repay. Apart from the obvious harm to peasant attitudes towards credit, the failure of the COZ has resulted in the present institutions adopting more strict requirements regarding credit worthiness. Before we discuss the operations of the two institutions responsible for granting loans today, namely the Agricultural Finance Company and the Zambia Agricultural Development Bank, attention must be focussed on the increasingly important role being played by the commercial or private banks.

B. THE CHANGING ROLE OF THE COMMERCIAL BANKS

The arguments in favour of special agricultural credit banks and the operation in Zambia of two such institutions have not meant that private banks have no role. It is true that prior to 1966 one feature of commercial bank lending was the low level of credit extended to agriculture. The little that was extended to agriculture was given to established expatriate farmers. As a consequence the proportion of total bank credit declined up to the lowest point of 1.8% in 1967 during which year non-agricultural lending increased to 77% over the previous year.[82] From 1970 the proportion of bank lending began to improve, but the increase was rather slow, forcing the government during the Second National Development Plan period to call upon the banks to increase their lending to farmers.[83] The up-turn in 1970 appeared to indicate a growing awareness by commercial banks that they had a role to play in agricultural finance.

Since 1970, but particularly in the 1980s there has been a general increase in lending to the agricultural sector by all commercial banks. There are six commercial banks doing business in Zambia - the Citibank (Zambia) Ltd; the Bank of Credit and Commerce (Zambia) Ltd; Grindlays International (Zambia) Ltd; the Standard Chartered Bank (Zambia) Ltd; Barclays Bank (Zambia) Ltd, and the Zambia National Commercial Bank Ltd. Of these only the Zambia

National Commercial Bank is wholly owned by the government. The rest are privately-owned as earlier attempts on the part of the government to buy shares were not successful. The Citibank is very small and is the latest to appear on the Zambian commercial banking business. Its share of agricultural lending only amounts to nineteen percent of its total lending figure which by December 1984 amounted to slightly above thirty-two million kwacha.[84] Its major emphasis appears to be mining which during the same year received fifty-eight percent, with agriculture taking second place and manufacturing and commerce sharing twelve percent.[85]

The Bank of Credit and Commerce is also a comparatively small bank, of recent origin. As on 31st of December 1982 the proportion of lending to the agricultural sector was nearly seventeen percent of its total amount lent. Its priority was on manufacturing and mining and quarrying. Building and construction also received a higher proportion than agriculture. In 1983, however, the proportionate share of agriculture almost doubled, rising to thirty-one percent. But manufacturing industry took first priority, accounting for thirty-eight percent of the total loan funds, with mining, building and construction, and distribution and services sharing the major proportion of the remainder. In 1984 there was a further increase in the share of loan funds to agriculture. Its share rose to thirty-six percent. The priorities remained the same. Agriculture came second to manufacturing, but building and construction lost place to distribution and services (including trade). The position was similar to that of Grindlays Bank. In 1982 its total

expenditure on agriculture only amounted to approximately thirteen percent of total lending. Its major proportion going to the mining and other parastatal manufacturing companies, in fact almost half. It also seems to have lent a sizeable proportion to multi-national companies, with the rest being spent on retail businesses. In 1984, however, there was a dramatic shift in emphasis. Manufacturing took first priority, accounting for just over thirty-two percent of total lending, but agriculture rose to second place with nearly twenty-three percent, while mining took third place. As for the Zambia National Commercial Bank the figures for 1984, indicate, yet again, that the agricultural sector occupied a third place. Manufacturing had first priority while retail trade took second, leaving agriculture with only fourteen percent of total lending. Some caution must be exercised, however, as loans to financial institutions amounted to forty million kwacha. It is not clear which financial institutions these are, but it is possible that the two specialised credit institutions could have borrowed from the National Commercial Bank, as they have been in the habit of doing. If this is the case, the share of agriculture in comparison to the rest would rise to more than fifty percent. These figures are based on returns by each bank submitted to the Bank of Zambia.

The four commercial banks mentioned above have had a short history and their individual financial outlays are much less than the two main commercial banks, the Standard Bank and the Barclays Bank. With regard to the Standard Bank the records, submitted quarterly, to the Bank of Zambia indicate that agriculture has consistently enjoyed first

priority, at least since 1979, the period during which the government drive for increased agricultural production gained momentum. Not only has agriculture featured better than mining and manufacturing but between 1980 and 1983, there has been an increase of over seven percent over and above the 1979 figures. According to the percentages provided by the Standard Bank itself, agricultural credit, although amounting to only twenty-eight percent in 1980, was the highest proportion given to any industry. Manufacturing received an average of eleven percent, while mining was just above ten percent, thus totalling twenty-one percent, still less than the credit advanced to agriculture. This situation remained unchanged both in 1981 and in 1982, although by 1982, manufacturing industry had far outstripped mining. In 1983, however, agricultural credit shot up to thirty-five percent by December, and as on the 31st of December 1984, agriculture accounted for thirty-eight percent of total credit given.[86] While agriculture enjoyed an unassailable pride of place, however, the second place alternated between mining and manufacturing throughout all the quarters.

The same trend is discernible from the 1983 and the 1984 figures available for Barclays Bank. In 1983 the Bank spent almost thirty-five percent of its loanable funds on agriculture, and in 1984, this figure had risen to forty-five percent. Agriculture in recent years, has occupied a central place, followed by mining and quarrying, and thirdly manufacturing. Not only is the proportion of credit for agriculture much higher in the two major banks - the Standard Bank and Barclays Bank, but also the actual

amounts given as loans are far in excess of loans provided by the rest of the banks, taken individually. It is also important to bear in mind, that the total figure given to agriculture and agro-industries by all the commercial banks is in excess of all the loanable funds of both the two credit institutions created by government - the Agricultural Finance Company and the Zambia Agricultural Development Bank.[87] This is not to imply, however, that specialised credit institutions are, therefore, irrelevant, because the identity of the recipients of commercial credit, differs substantially from that served by the specialised credit institutions. To take the example of Barclays Bank into whose role Wilson has done comprehensive research, Barclays has been able to increase its lending to small and medium scale "emergent farmers" although it has minimised credit to individual or independent farmers (as opposed to those who are part of a settlement scheme) on customary land.[88]

According to Wilson's report, about ten percent of the small and medium term loans went to farmers on customary land and another ten percent to those farmers with small holdings near urban areas, and the remaining eighty percent was spent on farmers participating in government schemes and projects on State Land.[89] Apart from assisting in financing trainees in agricultural training schools, the Bank has been assisting three other schemes, the most important of which is the scheme operated by the Tobacco Board of Zambia. In this scheme, the Tobacco Board of Zambia (TBZ) having acquired land from the government grants short-term leases to individual tenants who cultivate tobacco under the supervision of the TBZ. A machinery pool (for hire) of

tractors and machinery is provided by the TBZ for new tenants who, in later seasons obtain medium term loans from the Board for the purchase of implements. As the performance of the tenants improves, the most successful tenants move off the scheme into other farms owned by the TBZ on more independent basis. Barclays Bank assists the successful tenants, and in their early days, their loans are guaranteed by the government. These government guarantees are not provided for subsequent years, so that much of what is lent by the Bank is inadequately secured.

Specialised credit institutions such as the Agricultural Finance Company have also assisted such schemes in addition to subsistence farmers. The amount of money lent by such institutions may be small in proportion to the number of subsistence farmers, but their effort has provided an opportunity where none existed before. Rather than take the risk of lending to individual subsistence farmers, commercial banks provide loans to specialised credit institutions such as the Agricultural Finance Company who later disburse the same to individual farmers. By lending to these institutions under a government guarantee, commercial banks undertake no risks at all. Nevertheless, the efforts of commercial banks are highly appreciated because specialised credit institutions do not have adequate funds to meet the demand for credit.

In the limited circumstances in which commercial banks lend directly to farmers, the nature of the security that they require is of utmost importance. Commercial banks use two types of security - the mortgage of land and the agricultural charge. The importance of these two types of

security depends on the resources of the farmer. Commercial farmers may choose either to obtain a mortgage or to create an agricultural charge or both. For the majority of farmers, however, neither of these two types of security is available. These two types of security are separately discussed below in terms of their relevance to the various categories of farmers - commercial, emergent and subsistence.

1. Mortgages of Land

This type of security is one of the most popular among commercial farmers, most of whom are farming on State Land. Its importance has, however, been adversely affected by the land reforms of 1975. Section 10(1) of the Land (Conversion of Titles) Act states:

> "Any mortgage, charge, or trust subsisting over land immediately before the commencement of this Act shall, on such commencement operate only on and against the unexhausted improvements on the land and, so far as regards land apart from the unexhausted improvements, shall be deemed to be extinguished."

This provision means that no mortgage can be created out of undeveloped land because it cannot be sold for value. Nevertheless the broad definition of unexhausted improvements as "anything resulting from the expenditure of capital or labour ... or the making of any material change in the use of any building or land"[90] should enable a farmer who has merely cleared his farm to execute a mortgage based

on the cost of the labour. The important thing to remember, however, is that whereas before the land reforms a farmer could raise a mortgage without any prior investment in the development of the land, after the reforms, the initial step is to raise capital, develop the farm and only then would the farmer be in a position to mortgage the farm. How the initial capital is raised is a matter for the individual farmer himself as he cannot expect any assistance from the banks since undeveloped land is no security at all.

Mortgages of customary land have never taken place. Two issues are relevant to the mortgaging of land in the Reserves and Trust Land. One is whether it is possible to create a mortgage of land falling under customary law, and the second is whether registration of title whereupon the land would then be governed by statutory tenure would attract commercial banks to the land in the Reserves and Trust Land. It has been shown in Chapter Three that, while there is a controversy as to whether or not customary law permits the sale of land, there is no doubt that the sale of improvements on it, together with the land is permitted. Since the customary land holder can sell land together with the improvements on it, he can legally create a mortgage in favour of a financial institution, which, in the event of default would have the right to dispose of the land. Legally, therefore, there would appear to be no barrier on a farmer mortgaging his customary land. There is, however, one customary rule which would appear to make mortgages of customary land impracticable. Under customary land tenure applicable to all ethnic communities, for a person to acquire rights in land such person must be either a member

of such community, or have the permission of the traditional authorities to settle on the land of that community. Similarly, any transfer of land is permissible only in so far as the transferee is resident in the area of such a community, otherwise, as a "stranger" he would have to secure the permission of the traditional authorities referred to. In order to lend on the security of customary land, the bank, being a "stranger", would have to secure the permission of traditional authorities to acquire the land by way of a mortgage. In the event of default and the bank wishing to realise its security, the requirement of residence would seriously limit the range of people to whom the land could be disposed of by the bank. Consequently, due to depressed demand, the value of the security would be so compromised as not to be worth the risk.

The use of land in Reserves and Trust Land as security would only be practicable after land tenure reforms by which rights similar to those enjoyed in State Land would be introduced and a system of documentary title introduced. The question still remains, however, whether such reforms would necessarily attract financial institutions. The assumption by those demanding registered title to land in the Reserves and Trust Land is that this would be the case. This assumption is, nevertheless, not justified.[91] The Kenyan experience disproves this assumption for the "original hope that the commercial banks would become an even larger source of credit for African farmers has not, by and large, been realised ... the possibility of getting a mortgage has not ... significantly enhanced the security of a loan".[92] It is not often realised that it is more

convenient, administratively, for the commercial banks to lend to the few commercial farmers than to the thousands of smallscale farmers.

Moreover, the increase in dealings in customary land may have dangerous consequences. A UNFAO report of 1966 warned:

> "Above all, total freedom to transfer and dispose of land as a chattel, which is the logical result of the widespread establishment of individual ownership, might lead to property being grabbed by the moneyed class, i.e. the tribal chiefs, leading rural citizens, and the urban rich ..."[93]

The Report also points out that funds used for purchasing land would no longer be available for productive investment. The East African Royal Commission, while advocating the "individualisation" of tenure, appreciated the danger of rural indebtedness. The Commission noted that in many countries with similar conditions as East Africa, peasant land ownership had resulted in a heavy burden of what it termed as unproductive debt. The Commission observed:

> "When land has become a negotiable security which can be used for raising loans, there are always those who, in times of prosperity , wish to borrow and those who are prepared to lend money on a scale out of all relation to the value which the land offered as security will assume in times of depression. The result is the creation of unsupportable burdens of indebtedness in which debt charges swallow up the income earned from the land and so eventually destroy incentive to further effort on the part of the cultivator."[94]

The Commission could well have added that the chronic indebtedness of peasants would result in their being dispossessed of their land by financial institutions which would sell the improvements together with the land to the highest bidder, leaving the peasants landless. It is not

enough to state as does Paul Brietzke that for the present "the fear that a landless class will appear (in Malawi) seems to be groundless as rural land values are so low".[95] The value of improvements on the land will increase with increased demand and this is likely to take place earlier in areas of land shortage than in others, but precautions cannot be postponed until the situation becomes critical. The Commission itself suggested safeguards calculated to prevent peasants from abusing their freedom to mortgage land and some restrictions on the exercise of the power of sale by lending institutions.[96] As with all controls however, the problem is one of the capacity of the State to carry out such control effectively, and as demonstrated in Chapter Two regarding agricultural State Land, control is a very difficult task.

2. Agricultural Charges

Agricultural charges are created under the Agricultural Charges Act which was passed by the colonial government in 1961[97] and revised in 1963.[98] The general purpose of the Act is to facilitate the borrowing of money by farmers on the security of charges created on farming stock and other agricultural assets. A farmer may execute, in favour of any person, a charge on all or any of the farming stock or other agricultural assets as security for a loan.[99] The Act provides for two types of charges, a floating charge and a fixed charge. A floating charge can be created only in

favour of a bank defined as "any commercial bank ... and the Government",[100] otherwise it is null and void notwithstanding that it has been registered.[101] A floating charge may be effected on farming stock and other agricultural assets from time to time belonging to the farmer, but should not include tobacco, maize, potatoes, milk or vegetables or else it will be void as regards any of these goods.[102]

A fixed charge may be created from farming stock and other agricultural assets including:

a) in the case of livestock, any progeny thereof which may be born after the date of the charge; and
b) in the case of agricultural plant, any plant which may, whilst the charge is in force, be substituted for the plant specified in the charge.[103]

While the parties to a fixed agricultural charge are free to agree on any terms the Act has granted certain rights and imposed certain obligations. A fixed charge confers on the holder three types of rights.[104] One of the rights entitles the holder, on the happening of any event specified in the charge as being an event authorising the seizure of property subject to the charge to take possession of the property so subject. Another right conferred on the holder by the Act is the right to sell the property which he has taken possession of, after an interval of five clear days or such less time as may have been agreed by the parties. Where the charge so provides, the sale may be by private treaty, but in the absence of any such provision, the sale has to be by public auction. Finally, the holder of the charge is entitled, in the event of his power of sale being exercised, to apply the proceeds of sale towards the discharge of the

moneys and liabilities secured by the charge, and costs incurred by him in taking possession of the assets and the sale, but he has to pay any surplus to the farmer.

The Act also imposes on the farmer several obligations concerning the security. Unless the parties have agreed to the contrary, whenever the farmer sells any property which is the subject of the charge, he must pay to the holder the amount of the proceeds of the sale or the money received on account of the sale, and subject to the agreement between the parties, the sum so paid, is to be applied by the holder to discharge the loan outstanding.[105] Although the farmer is under no obligation to insure his property, where the property is insured any monies received under the policy of insurance must be paid over to the holder of the charge so that it can be applied to the discharge of the loan.[106] This obligation on the farmer is, however, subject to the agreement of the parties. Alternatively, where money is due to a farmer under an insurance policy regarding property which is subject to the charge, the insurer may pay to the holder of the charge directly and any such payment is a valid discharge of the insurer to the farmer to the extent of the amount so paid. As in the previous case, the holder must use the money from the farmer's insurer to discharge the farmer's debt.[107] In so far as other creditors of the farmer are concerned, the holder of a fixed agricultural charge has priority. But this priority is limited to the circumstances where the other creditor has actual knowledge that the money was paid to him in breach of the provision which requires the proceeds of sale to be paid to the holder. As this aspect is crucial to the nature of the

security conferred by an agricultural charge, this provision is quoted in full. Section 4(5) states:

> "Where any proceeds of sale which, in pursuance of the obligations imposed by subsection (2), ought to be paid to the holder are paid to some other person, nothing in this Act shall confer on the holder a right to recover such proceeds from that other person unless the holder proves that such other person knew that such proceeds were paid to him in breach of such obligation, but such other person shall not be deemed to have such knowledge by reason only that he has notice of the charge."

Further, it is expressly provided that so long as the proceeds of sale are to be paid to the holder, the farmer is at liberty to sell any of the property subject to the charge and neither the purchaser nor the auctioneer, as the case may be, should be concerned that the proceeds are paid to the holder even if he is aware of the existence of the charge.[108]

It is clear from section 4 that the farmer is entitled to sell property which is the subject of a fixed charge. The next question is whether, in view of this, the holder is adequately protected from the loss of the property which constitutes his security. On this issue the holder is protected in so far as accountability of the farmer to the holder is concerned. It is a criminal offence punishable by imprisonment for a period not exceeding three years, for the farmer fraudulently to fail to pay the holder the proceeds from the sale of property which is the subject of the charge.[109] Likewise, if the farmer fraudulently removes or suffers to be removed from his land any property subject to the charge, he is guilty of an offence and liable to the same period of imprisonment. Where, however, third parties

are involved the protection of the holder appears to be negligible. The question of how to strike a balance between the interests of third parties against the holder of an agricultural charge has been a difficult one. Most consumers, for instance, buy produce from farmers, and other farmers buy minor agricultural assets on a very informal day-to-day basis. It would be too much to ask such purchasers to search the Registry to discover whether the farmer's assets are subject to agricultural charges. At the same time the requirement of registration would serve little purpose if not to ensure that those with notice must account to the holder the sum offered for the assets. But the Act goes further to say that notice of the existence of a charge is not sufficient unless the purchaser knows that the farmer is accepting the money in breach of the charge. In fact the onus of proof is on the holder to show that the third party knew that the money paid to him was paid in breach of the farmer's obligation.[110] This is a very difficult onus to discharge particularly because the knowledge on the part of the third party that the farmer has an agricultural charge is not sufficient. Apparently the holder must prove, in addition, that the third party knew that the property sold to him is the property which is the subject of the charge. A better compromise at least from the holder's point of view should have been that where the third party had notice of the existence of the charge, the onus would be on him to prove that the goods he purchased were not the subject of the charge. Notice should act as a forewarning so that those who deal with farmers should search the registry in respect of the property which has been charged. In the

absence of this provision, the holder is left with a mere action against the farmer for breach of contract, in addition to recourse to the criminal justice which does not necessarily act as a recompense to the holder's loss of the security. Some solace could have been granted to the holder by a provision which would require the farmer to use the proceeds received from a third party to acquire other assets which would form part of the property charged so as to restore the holder to the position he was in before the sale. As it is, the Act puts the holder in a precarious position when faced with a fraudulent farmer.

In the case of floating charges, the security is similar to a company debenture.[111] The proviso, however, lists the circumstances in which the floating charge becomes a fixed charge. These circumstances include a receiving order in bankruptcy being made against the farmer, the death of the farmer, the dissolution of partnership in the case where the property charged is partnership property, and where in cases where the parties agreed that the happening of a certain event the holder may serve written notice, the actual service of such notice.[112] The farmer who has granted a floating charge is under the same obligations as the one who has executed a fixed charge and has to pay over the holder in respect of any proceeds received from the sale of agricultural assets, or compensation under a policy of insurance. In the case of a floating charge, however, the farmer need not comply with this obligation if the amount received is used to purchase farming stock which become subject to the charge.[113]

Section 6 compels a farmer to give a written notice to

a purchaser of certain types of farming stock. The notice should state the names and addresses of all persons holding agricultural charges over the farming stock and the priority of such agricultural charges. The farming stock on the sale of which notice is required are cattle, tobacco, milk, maize, agricultural vehicles, machinery or other plant. On receipt of the notice, the purchaser or person effecting the sale on behalf of the farmer as the case may be must pay the proceeds of sale to the holders of the agricultural charges in accordance with the notice and with due regard to the priority and amounts stated in the notice. Compliance with this provision by the purchaser operates as a discharge of such purchaser from any claim, but any purchaser who contravenes this provision is guilty of an offence and liable on conviction to a fine or imprisonment or both.[114] Similarly, a farmer who fails to comply with the requirement that he must furnish a written notice to a purchaser is guilty of an offence and on conviction is liable to a fine or imprisonment or both.[115] The rest of the provisions of the Agricultural Credits Act relate to the mechanics of registration of charges, but again the question arises as to whether section 6 regarding notice confers any security on the holder of an agricultural charge. In the absence of notice from the farmer, the holder is not protected against third parties, as they are not required to pay the proceeds to him. Further, even where notice has been given by the farmer to the purchaser, if the purchaser does not account to the holder, a criminal proceeding against the purchaser is the only remedy. The purchase money is recoverable from a third party only in cases where such third party received

money from the purchaser with knowledge that the property sold was subject to the charge. The circumstances in which third parties (who may be the farmer's other creditors) may have notice are very limited because there is no provision in the Act requiring the farmer to publish notices of charges. In fact it is unlawful to print for publication or publish any list of agricultural charges or names of farmers who have created agricultural charges.[116] Apart from the question of notice, "an agricultural charge shall be no protection in respect of property included in the charge, which, but for the charge, would have been liable to distress for rent or rates".[117] The protection offered to the holder under the Agricultural Credits Act is, therefore, very limited. The agricultural charge is not, in the strict sense, real security, but access to the means by which the creditor may recoup his money.[118]

The importance of agricultural charges as security depends on the value of the farmer's agricultural assets and/or farming stock. Farming stock is defined, fairly broadly, to include crops, including horticultural produce and livestock, which includes poultry.[119] Agricultural assets in the form of implements such as tractors etc. are not available to subsistence farmers, hence their inability to produce more. But smallscale farmers (those who sell at least half of their produce) in areas where agriculture has progressed to a more commercial stage such as Southern Province, own implements such as ploughs, in addition to valuable farming stock in the form of cattle. These farmers are, therefore, able to raise the security required for an agricultural charge. Commercial banks have, nevertheless,

restricted lending on the security of agricultural charges to commercial farmers, mediumscale farmers, and in respect of smallscale farmers, only those operating within supervised schemes. The ordinary subsistence farmer in the villages can only look to the government credit institutions for assistance. An agricultural charge cannot assist the subsistence farmer because he does not have adequate farming stock. In terms of which of the two forms of security, that is the mortgage and the agricultural charge, is more commonly used, the figures published by the Lands Department are not conclusive. For instance, in 1970, the Lands Department reported that 737 mortgages had been registered as compared to 500 agricultural charges, but the figure representing the number of mortgages registered did not draw a distinction between mortgages of urban properties and those of agricultural land.[120] Tentatively, one may conclude that as urban properties are more numerous than agricultural properties, the total of 737 registered mortgages has a higher proportion of urban properties than agricultural and that agricultural charges are more common than mortgages.

C. CO-OPERATIVE CREDIT

Co-operatives have a long history in Zambia. One form of these co-operatives is the credit union, commonly referred to as the thrift society. There is a general

consensus that credit unions can play an important part in the mobilisation of the savings of the members and the use of such savings to meet the short-term and seasonal cash requirements of some of their members.[121] Immediately after independence, Zambia experienced a rapid increase in co-operatives although there was greater emphasis on producer and marketing co-operatives.[122] A full discussion of the post-independence development of co-operative marketing unions is contained in Chapter Five. At this stage specific attention will be paid to credit unions. In terms of financial assistance to credit unions, the government plays no role although it administers the Co-operative Credit Scheme (through the Department of Co-operatives), began in 1975. The funds for this scheme were donated by the Swedish International Development Agency, (SIDA), to the government to be used for the provision of seasonal credit to rural agricultural co-operative societies.[123] It is not clear how much of the resources of the scheme has been given to credit unions as opposed to marketing and producer societies. For instance, the Eastern Province report discloses that in the 1981/82 season twenty-six societies participated in the Co-operative Credit Scheme, but it does not say whether any of these were credit unions.[124] Before we discuss the role of credit unions and their significance, the legal framework within which these societies operate need to be briefly reviewed.

1. The Co-operative Societies Act, No. 63 of 1970

Although this Act applies to all types of co-operative societies, it has some provisions which are applicable to credit unions only. Among the provisions which apply to all societies are those regarding the minimum number of membership and the powers and functions of the Registrar of Co-operative Societies. A credit union or any form of co-operative society can be formed by at least ten persons. Such persons must show that they intend to form such a society in accordance with the statutorily defined co-operative principles.[125] The application to the Registrar must be in prescribed form and accompanied by copies of the society's by-laws.[126] Prior to approving registration, the Registrar may require such additional information about the proposed society as he deems necessary including:-

"a) the economic or other need for the organisation of the society;
b) the educational and advisory work respecting co-operative principles and the organisation and operation already being carried on among the applicants for registration and other persons expected to become members;
c) the number of persons expected to become members upon the commencement of operations;
d) whether the capital to be furnished initially by the applicants for registration and other persons expected to become members is sufficient for the commencement of operations;
e) the availability of officers capable of directing and managing the affairs of the society, and of keeping such records and books of account for the society as the Registrar may require."

Where on account of the information provided to him under subsection (1) of section 11, the Registrar is of the opinion that the applicants for registration and other

persons expected to become members require more educational and advisory work regarding co-operative principles and the organisation and operation of a society, he may delay his approval of registration in order to prescribe more educational and advisory work, or allow discussion of the objects of the society with more persons who could be expected to benefit from membership.[128] Similarly, if the Registrar is of the opinion that the membership is too small for the satisfactory commencement of operations, or more time is necessary to raise the capital initially required, or that more training is needed for persons expected to become officers, approval for registration may be delayed. If as a result of the information required, and notwithstanding any action taken under subsection (2), the Registrar forms the view that registration is not "economically advisable" or he is otherwise unwilling to approve registration, he may decline to approve.[129] In any such case, however, he must give specific reasons for declining to register the society not only to the Minister, but also to the applicants themselves. The members of the proposed society have a right to appeal to the Minister against the decision of the Registrar but the appeal must be lodged within ninety days of the refusal by the Registrar.[130]

Where, however, the Registrar entertains no doubts concerning the feasibility of the society, he may register it, by issuing a certificate of registration. Registration of a society makes the society a body corporate by the name under which it is registered. The registration entitles the society to hold property, enter into contracts, institute

and defend suits and other legal proceedings and to do any of the things that it has the power to do under the provisions of the Act.[131]

Part VIII of the Act contains special provisions regarding credit unions. The objects of a credit union are stated as "the promotion of thrift among its members and the creation of a source of credit for its members at controlled rates of interest exclusively for provident or productive purposes".[132] Membership of a credit union must be drawn from groups of persons having a common bond of occupation or association or from groups living within a well-defined neighbourhood or community, or within a rural or urban district.[133] This provision does not, however, prevent the credit union, with the approval of the Registrar, from admitting as members persons from prescribed organisations. These organisations are a public body performing a function of government or providing a public service; a religious organisation; a labour, agricultural, or benevolent organisation; and an organisation operated exclusively for charitable, educational or community welfare purposes, without any part of its income being available for the personal benefit of the members or share holders.[134] Any organisation which becomes a member of the credit union has a right to vote through a duly appointed delegate at the meetings of the credit union.

A credit union or society has various powers relating to the raising of funds. A credit union is empowered to receive the savings of its members as payment for shares. It may also receive deposits from other societies. It may make loans to its members for provident or productive

purposes. It may deposit money with commercial banks, the Post Office, building societies and other companies authorised to receive money on deposit. It may also invest in stock bonds or securities of the government, provided that the total amount of investments made by a credit union do not exceed half of its capital.[135] The Act also confers on credit unions wide borrowing powers. Subject to the approval of the Registrar of Co-operative Societies, a credit union may borrow upon a vote of at least three-fourths of the members of the Board of Directors:

> "(i) moneys not exceeding in the aggregate one-quarter of its combined capital, surplus and deposits; or
> (ii) moneys not exceeding in the aggregate an amount equal to the total of the market value of stocks, bonds and securities of the Government of Zambia held by the credit union ..."[136]

Where members of the Board of Directors wish the credit union to borrow additional moneys, at least three-quarters of them must so recommend. Thereupon the matter is brought before the members of the credit union who must pass a special resolution[137] to implement the recommendation of the directors. Even where a special resolution has been secured, however, the balance owing by the credit union in respect of all the funds borrowed should not, at any time, exceed half of its combined capital, surplus and deposits. Another way of raising funds arises from the power conferred on the credit union, with the approval of the Registrar to "charge, hypothecate, mortgage or pledge its immovable or movable property".[138]

With respect to loans section 64(1) provides that all loans by a credit union must be made for a provident or

productive purpose. The regulations made under the Act prescribe the maximum amounts that may be lent[139] and except for loans of small amounts the credit union must insist on security being provided. An assignment of shares, deposits or negotiable instrument endorsed by a guarantee may be accepted by the credit union as security.[140] Where a mortgage of land is offered as security, the Registrar's approval must be secured before the money is lent.[141] Where the loan does not exceed twenty kwacha and the repayment must be made within one month no security is required except a promisory note to repay it.

Certain provisions have been included to prevent some members of the union receiving a disproportionate share of loan funds. Under section 65(1) no loan may be made by the credit union if the result is to cause the borrower to become indebted to the credit union for an amount which totalled with other loans to the borrower exceed eight percent of its paid-up capital surplus and deposits, or in excess of such lesser percentage as may be provided in the by-laws. Where more loan applications are pending than can be granted by the credit union from the funds available, preference must be given by the credit committee to the applicants for smaller loans in the order in which the applications were received, if the need for the loan and the security offered compare favourably with the need and the security offered by applicants for larger loans.[142]

2. The Development of Credit Unions

The wide supervisory powers of the Registrar and the detailed rules by which credit unions are to operate under Co-operative Societies Act, 1970 are a response to the failure of government policy on co-operatives immediately after independence. From 1968 the government strove to encourage the formation of co-operatives generally, and more specifically, producer co-operatives. This the government did, in part, through making credit more easily accessible to co-operatives than private individuals. Consequently there was a sudden increase in the number of co-operatives but the quality of these co-operatives left much to be desired. They were, basically, family co-operatives consisting of the leader of the household and the members of his family, the main intention being to obtain loans easily. The number of co-operatives increased to such an extent that the Department of Co-operatives failed to cope.[143] Based on his experience on the National Co-operative Development Committee of the then Ministry of Agriculture and Rural Development, Lungu has stated:

> "The response exceeded all expectations, as hundreds of groups of people were clamouring for registration. The increase in the number of co-operative societies placed a severe strain on the staff of the Department of Co-operative Societies, which, at the end of 1965, totalled only 132".[144]

The table he provides shows that by 1970 the number of cooperative societies had more than doubled. This increase in co-operative societies did not, however, include credit unions which lost their appeal because, due to relaxation in lending policy by the COZ people did not see much need to pool their savings.[145] As the number of co-operatives

surpassed the managerial capacity of the Department of Marketing and Co-operatives, many of the co-operatives collapsed and in 1970 it was decided to develop more self-reliant and economically viable societies. More careful examination was to be made before registration, and more training was to be given to members and holders of office before and after registration. It is in the light of the initial problems and consequent failure of co-operative policy that the Co-operative Societies Act, 1970 was passed. This explains the extent to which the Act and the rules have gone to define the pre-requisites for the registration of societies and the wide powers of the Registrar and the regulation of day-to-day business of the societies. By so doing, however, the Act has become very complex and necessitated, even further, the need for the comprehensive education of members of societies and office holders. It is doubtful, however, whether the Department of Co-operatives is able to extend its services to rural areas, other than provincial capitals.

Generally, however, the number of credit unions has shown a slow, albeit, steady increase and the Credit Unions and Savings Association of Zambia has contributed to the survival of some of them. The Association has been carrying out the re-organisation of some credit unions and the preparation of development programmes for credit unions.[146] Government has attributed the slow development of credit unions to a deliberate policy of "controlled expansion", so as to avoid the rush which results in the formation of unviable societies.[147] In 1979, there were 91 credit unions with a total membership of 21,194 and the total savings and

share capital amounted to K2,863,857. In 1980, the number increased to 105, membership increased to 21,969, the share capital to K3,695,198 with a total turnover of K259,331.[148] In 1981, the number of registered credit unions increased to 114 while the total membership jumped to 26,416, but while the share capital and savings increased to K5,669,714, the actual turn over decreased to a pre-1980 level of K182,707.[149]

At the provincial level, the trend in the development of credit unions follows the trend in agricultural output. The more productive the province, the greater the resources with which to form credit unions.[150] Lusaka Province tops the list with 19 credit unions, although two of them are no longer in business. Lusaka also has the largest membership, 10,394 and the largest turn over, K119,545 per annum. The Southern Province has 21 registered societies, three of which are dormant, but the membership is very low, 3,436 and the turn over is only K10,225. The Copperbelt has 14 of which only 8 are active and Western Province has nine societies. The rest of the provinces have very small numbers, among some of which are dormant.

In spite of the amount of effort that has been put into encouraging credit unions since the colonial era, the result must be disappointing. This is not, however, surprising taking into account the limited resources available to farmers in rural areas. The survey into the possible extent of rural savings conducted by the Rural Development Studies Bureau of the University of Zambia shows that three-quarters of the rural population in Zambia have less than K50 per household per annum. Such humble resources leave little

margin for savings. Consequently, the role of credit unions in the development of agriculture in the rural sector must be seen as marginal.

D. THE AGRICULTURAL FINANCE COMPANY

Following the dissolution of the COZ in 1970,[151] its work was taken over by the Rural Development Corporation, a government-owned company. The Rural Development Corporation (RDC), came into existence as the Agricultural Development of Zambia Company Ltd and was incorporated under the Companies Act[152] on the 1st of April 1968. By special resolution, it became the Rural Development Corporation on the 10th of September, 1969.[153] The RDC created a subsidiary, the Agricultural Finance Company, which was incorporated under the Companies Act on the 12th of January, 1970. With regard to personnel, the RDC had retained all the staff of the COZ when it took over, and these workers were subsequently transferred to the Agricultural Finance Company (hereinafter referred to as the AFC), a factor which drew a great deal of criticism from members of the Opposition in the National Assembly. It was widely felt that those who had failed to make the COZ successful should not be involved in the administration of the new body, but the government was not persuaded and most of the staff who had served the COZ were absorbed by the AFC.

In the Second National Development Plan, it was disclosed that the establishment of the AFC in the place of the defunct COZ showed the determination of the government to operate "a business-like credit system providing for the financial needs of the farming community".[154] Under the Plan, it was envisaged that the AFC services would be expanded to cover an increasing number of credit-worthy producers, that it would have sufficient funds to meet all reasonable requirements including long term loans, and that efficiency will progressively improve.[155]

Unlike the COZ, the AFC is not a statutory body, having been incorporated under the Companies Act. It has often been assumed that this would minimise government interference, so as to permit the officers of the company a free hand in the running of the company.[156] In fact, this is not the case. Several factors contribute to government exercising a great deal of influence in the operation of the company. First, the initial funds are provided by government. Second, all the members of the board of directors are political appointees and, as such, are bound to promote political ends in the dispensation of loans, and third, the government, through the Commissioner of Lands, has control over land, which constitutes the security of the AFC. The government is, therefore, in a position to block efforts by the AFC to repossess farms belonging to people who occupy influential positions.

1. Organisational Structure

The AFC is headed by a Board of Directors, the number of whom is determined, from time to time, by the company in a General Meeting, but the number of members of the Board should not be less than two nor more than ten.[157] The Board of Directors has been vested with a general power of management of the company including the power to do all things necessary to carry into effect all the objects, purposes and discretions provided in the Memorandum of Association. The limitations being the provisions of the Companies Act and the resolutions of the company in a General Meeting.[158] The Board is specifically empowered to borrow on behalf of the company, and for this purpose use the company's assets to create a mortgage or charge. It may also issue debentures, debenture stock and other securities to procure funds for the general business of the company.

Of the five directors, three were appointed in their own right while the other two were members ex officio. These were the Permanent Secretary, Ministry of Finance, and the Permanent Secretary of the Ministry of Agriculture and Water Development.[159] The Board of Directors appoints the General Manager and the Provincial Managers. Each Province has a Provincial Manager, accordingly there are nine Provincial Offices of the AFC. The Provincial Manager is assisted by the Provincial Management Committee comprising seven members including the Provincial Manager who acts as the Chairman. The other members are two loans officers, the accountant or his assistant, the Credit Controller or his assistant, one technical officer (livestock) and one technical officer (estates). Below the provincial level are

District Officers, headed by the District Manager. Up to 1985, there were forty-two district offices, with the Southern, Western and Eastern Provinces, having six each, the North-Western and Luapula Provinces having five each, Lusaka three, Copperbelt, one, but the province with the largest number is Northern Province, with seven district offices. At each level the AFC office has power within a monetary ceiling to approve loans. At district level the maximum is K10,000 irrespective of whether the loan is seasonal, medium or long term. But loans for the purchase of farms, however small the amount applied for, must be approved by the Head Office in Lusaka. Provincial offices may approve loans between K10,001 and K40,000. The Head Office headed by the General Manager may approve loans of between K40,001 and K100,000, except for medium term loans whose ceiling is only K50,000. For medium term loans in excess of K50,000 and any other loan in excess of K100,000, only the Board of Directors is competent to approve.

Two other bodies are also involved in the consideration of loan applications - the District Development Committee and the Ward Development Committee. The former attends to applications from commercial farmers and emergent farmers, while the latter is concerned with subsistence farmers. One may assume that the sums considered by the District Development Committees are larger than those considered by the Ward Development Committees, because subsistence farmers only receive seasonal loans on account of their inability to furnish adequate security.

2. Objects and Powers

The objects and powers of the company are contained in clause 3 of the Memorandum of Association. Clause 3 consists of twenty provisions broadly framed to enable the company not only to lend money for farming and the development of agro-industries, but also to invest its profits in all kinds of business. With regard to agriculture, the company's business is to lend money and provide "any kind of credit facilities to any person, company, statutory corporation, Government, Municipal or body politic, association or co-operative society" for a wide variety of purposes. These purposes include the purchase, development and improvement of land and the commencement or carrying on of farming operations generally; the purchase of stock and agricultural implements; the construction of irrigation works and work forming part of an irrigation scheme; and for the furtherance and promotion of any other developments, projects, industries etc which may be conducive to the material benefit of farmers or the farming industry. It is also the object of the company to lend money to any co-operative society, farming association, and other associations and unions for any purpose which is conducive for the furtherance of the interest of the farming and other rural industries.

To carry out the above objects the company is empowered inter alia, to borrow and secure the payment of money in such manner and on such terms as the directors may deem expedient and to mortgage or charge the undertaking or any

part of the property; enter into any arrangements with the government or other authorities that may seem conducive to the company's objects and to obtain from such government or authority any rights, privileges and concessions which the company may think desirable; and do all such other things as are incidental or conducive to the attainment of the company's objects.

The above objects and powers of the AFC reflect the high expectations with which the company was launched. As shown below, the demand on the company's resources has so increased, particularly on the part of farmers, that in the end the company has concentrated on financing individual farmers and co-operatives, while little has gone into the development of rural agro-industries. The company has, however, made full use of its borrowing powers, as it has been the recipient of loans from the commercial banking sector which charges a high rate of interest, which the company subsequently passes on to its borrowers.

The company makes three kinds of loans - seasonal, medium term and long term loans. Seasonal loans are granted mainly for the purchase of inputs needed to grow crops. The loan and the interest on it is due at the end of the harvest season.[160] The medium term loan is not fixed but is usually between two and five years, and may be used to purchase agricultural implements. The long term loans, usually referred to as real estate, are for periods extending from five years to any period the company may determine. It is usually used to enable a farmer to purchase land, together with improvements thereon, but it may also be used to make long term investments such as irrigation works.[161] The

loan, irrespective of type, must be used for agricultural purposes.[162] The specific purposes are incorporated in the loan agreement. This requirement, that the money lent must be used for productive purposes connected with agriculture is common to many lending institutions in Central and East Africa.[163] The rationale is not difficult to find - it is simply that the ability of the borrower to repay the loan is best enhanced if the farmer uses it to produce a surplus, the sale of which will raise the funds from which the loan and the interest can be repaid. While decrying the tying of loans to the purchase of particular inputs or the production of specific crops, Dodge warns that "it is important that adequate provision be made for guaranteeing that loan funds be used to purchase agricultural requisites rather than consumption items".[164]

There is, however, a contrary view which also requires attention. While it is accepted that not all the financial needs of the farmer can be classified as suitable for agricultural credit, in assessing the credit demand of the farmer, reasonable provision must be made for the living expenses of the farmer. Farmers are under various economic and social pressures to spend money on such items as education, health and customary obligations. As Binns has observed "it may be true that the way to deal with the problem of disproportionate expenditure on customary observances is by education, but education is slow, and, in the meantime, the demand is compelling, so compelling, indeed, that many farmers will fulfill their obligations to their religion and their societies before those to their farms".[165] The difficulties involved in an attempt to

provide "reasonable" living expenses are that such expenses have no relation to the capacity of the farm to produce more, so that the farmer will have to rely on non-farm income to meet the obligation and non-farm income is not half as reliable as farming, unless the farmer takes up wage employment. In fact it is because of the fear that the farmer will, in economic terms, misuse the money that package loans have been used. In such packages the farmer has, prescribed for him, the quantity of inputs that should be used for a given farm size. Payment is then made by local purchase order to the companies that have provided the farmer with the necessary inputs or implements as the case may be, so that the farmer does not handle any cash.[166] The only instance where cash is paid to the farmer is in respect of farm labour.

While the above method of dispensing credit helps to minimise the misuse of loan funds, it is, by no means totally effective, as there is the possibility that the farmer will sell the inputs to others in exchange for cash. Instances have been reported where fertilizer obtained through loans has been sold for cash. Those who still favour the idea of paying companies directly for inputs provided to the farmer, instead of giving cash to the farmer, claim that such instances are few and far between, particularly in small village communities where local affairs are common knowledge.[167] In such circumstances, the farmer is aware of the risk of the transaction becoming known to the local Ward Development Committee who will bar him from any future loans. Another problem arising from this method of granting loans is the advantage taken by

companies selling agricultural inputs and implements, of the institution providing credit. The company may overcharge the goods on the invoice the farmer takes to the AFC, knowing that the goods will be readily paid for. There is little evidence of this occurring in Zambia up to the present, perhaps on account of the fact that the companies who sell these goods are all parastatal bodies, such as the Agricultural Farm Equipment (AFE) for farm implements and Nitrogen Chemicals of Zambia (NCZ) for fertilizer, and the Zambia National Milling Company (MNC) for chicken and stock feed.

3. Security for Loans

The AFC relies on various forms of security for loans. These include agricultural charges under the Agricultural Credits Act, mortgages, bills of sale and stop orders. The majority of borrowers of the AFC, however, can only use stop orders because they are settled on or farming customary land. While some have agricultural implements which can be charged, many do not have such assets, and the only hope for repaying the loan is through future sales of farm produce. The most common form of security, therefore, is the stop order. A stop order is addressed to the purchaser of the farmer's produce, the most important of whom are National Agricultural Marketing Board (NAMBOARD) and the provincial co-operative marketing unions. The actual wording of the stop order is extremely important in determining its legal

significance. The stop order purports to assign the money due to the farmer from the marketing board and marketing co-operatives to the Agricultural Finance Company to cover the loan advanced to the farmer and the interest thereon. Before one can assess the legal significance of the stop order, some brief appraisal of the law relating to the assignment of choses in action such as debts is called for.

Pollock and Maitland trace the development of assignment of choses in action only in so far as the proposed assignee acts as an agent of the creditor. They state: "In the case, however, of the mere debt there is nothing that can be pictured as a transfer of a thing; there can be no seisin or change of seisin. In course of time a way of escape was found in the appointment of an attorney."[169] At common law, it is an established principle that an assignment of a debt cannot entitle the assignee to sue for it in his own name.[170] Prior to 1873 the only method of assigning a contractual right such as that arising from a contract of sale was by novation which required the consent of the debtor.[171] In equity, however, the notion that a contractual right could not be assigned was repudiated and the court of chancery enforced the assignments of choses in action generally. An equitable assignment cannot, of course, transfer the right to sue under common law, but it confers upon the assignee the right to invoke the aid of equity:

> "Equity considers that as done which ought to be done, and, since the parties have agreed that the common law right under the contract is the property of the assignee, the assignor must allow an action at law to be brought in his own name so as to make the transaction effectual."[172]

No particular form is required to constitute a valid equitable assignment. The transaction upon which the assignee relies need not be specifically referred to as an assignment. The determining factor is the intention of the assignor. If the intention of the assignor is that his contractual right should become the property of the assignee, then equity will compel the assignor to do all that is necessary to implement his intention. The only difficulty is to ascertain this intention. In Brandt's Sons and Co. v. Dunlop Rubber Co.,[173] Lord McNaghten speaking of an equitable assignment said:

> "It may be addressed to the debtor. It may be couched in the language of command. It may be a courteous request. It may assume the form of mere permission. The language is immaterial if the meaning is plain."[174]

The next inquiry relates to the effect of an equitable assignment as regards the assignee's right of action against the debtor. Whether or not an equitable assignee can sue the debtor in his own name depends, first, upon the nature of the right assigned, that is, whether it is a legal or an equitable chose in action; second, the nature of the assignment, that is, whether it is absolute or non-absolute. A legal chose in action is a right that can be enforced by an action at law, for example, a debt due under a contract of sale, with which we are concerned. An equitable chose in action is a right that was enforceable before the Supreme Court of Judicature Act, 1873[175] only by a suit in equity. It is a right connected with some form of property such as trust property over which the court of chancery had exclusive jurisdiction.

An absolute assignment is one by which the entire

interest of the assignor in the chose in action is, for the time being, being transferred unconditionally to the assignee and placed completely under his control. In order to qualify as absolute, however, it is not necessary that the assignment "should take the form of an out and out transfer which deprives the assignor forever of all further interest in the subject matter".[176] It is now a settled principle that a mortgage, in the ordinary form, that is, an assignment of a chose in action as security for a loan, with a proviso for redemption and reassignment upon repayment of the loan, is an absolute assignment.[177] In such cases the whole right of the mortgagor in the subject matter passes, for the time being, to the mortgagee, and the fact that there is an express or implied right to re-assignment upon redemption does not destroy the absolute character of the transfer.

Where the assignment is not absolute, it may take one of three forms. It may be a conditional assignment, an assignment by way of charge, or an assignment of part only of a debt. A conditional assignment is one which is to become operative or cease to be operative on the happening of an uncertain event. In order to show the contrast between an absolute and a conditional transfer two cases are cited, both of which have some resemblance with the stop order issued by the Agricultural Finance Company in terms of the wording of the agreement.

> In Hughes v. Pump House Hotel Co.,[178] a building contractor executed a written instrument by which in consideration of his bankers allowing him an overdraft, and by way of security to them for all money due or falling due in the future under his account, he assigned to them all moneys due or to become due to him under his building

> contracts. He also empowered the bankers to settle all accounts in connection with the buildings and to give receipts for money paid for work done by him.

It was held that the written instrument, since it unconditionally assigned, for the time being, all moneys due or to become due under the building contracts, constituted an absolute assignment.

> In Durham Brothers v. Robertson,[179] a firm of builders executed the following document in favour of the plaintiffs: "Re Building Contract, South Lambeth Road. In consideration of money advanced from time to time we hereby charge the sum of #1,080, which will become due to us from John Robertson on the completion of the above buildings, as security for the advances, and we hereby assign our interest in the above-mentioned sum until the money with added interest be repaid to you."

It was held that this was merely a conditional assignment.

The contrast in the two cases has been said to lie in the position of the debtors.[180] In Durham Brothers v. Robertson, the whole sum due from Robertson, it is argued, was not assigned to the plaintiff, but only so much of it as would suffice to repay the loan together with interest.[181] The document's effect was that when that amount was paid, itself an uncertain event, the interest of the assignee should automatically cease: "Thus the debtor, Robertson, became directly concerned with the state of accounts between the assignor and assignee, for he would not be justified under the document in making a payment to the latter after the money actually lent with interest had been repaid."[182] In Hughes v. Pump Hotel on the other hand, the debt was under the terms transferred completely to the assignee. There was no limitation of the amount for which the assignment should be effective, there was to be no automatic

reverter to the assignor upon repayment of the loan, and hence the debtors until they received notice of redemption and actual re-assignment, would be entitled to make payments to the assignee without reference to the state of accounts between him and the assignor.

An assignment by way of charge is one which entitles the assignee to payment out of a particular fund, but does not transfer the fund to him. In the case of Jones v. Humphreys,[183] a school master assigned to a money-lender so much of his salary as should be necesary to repay a sum of £22 10s which he had already borrowed and any further sums which he might borrow. It was held that this was not an absolute assignment of the salary, but a mere security which entitled the money-lender to have recourse to the salary according to the state of the school master's indebtedness.

After some initial fluctuation of judicial opinion it is now settled that the assignment of a definite part of a debt is not an absolute assignment. To be absolute the assignment must transfer the whole debt in its entirety. The rationale for this principle is to avoid increasing the burden on the debtor which would result if the creditor was permitted to split up the debt into separate causes of action.[184] It, however, necessitated the institution of a suit in chancery as a preliminary to the common law suit. The Supreme Court of Judicature Act, 1873 which amalgamated the superior courts of law and equity into the Supreme Court of Judicature permits a suitor to obtain by one proceeding in one court the same result which prior to the Act would have necessitated two proceedings.[185] Under section 25(6) the assignee of a legal chose in action may

sue in his own name if the assignment satisfies three conditions. It must be written; it must be absolute; and a written notice of its existence must be given to the debtor. If the assignment does not fulfill these conditions the assignee must rely upon the rules governing equitable assignments and must join the assignor either as a co-plaintiff or a co-defendant.[186] Attention must now be focussed on the stop order of the AFC, the legal effect of which must be examined in the context of the principles discussed above.

The stop order may be addressed to any purchaser of the produce of the farmer but usually stop orders are addressed to important marketing bodies such as the National Agricultural Marketing Board and marketing unions. The loan will ordinarily have been given before the marketing body becomes indebted to the farmer because the farmer needs the loan before he can produce and sell. Consequently, at the time the farmer executes the stop order, the actual amount of the debt is unknown to all parties - the farmer, the assignee, and the debtor. It is only after harvest and the marketing boards or unions have actually got hold of the produce will the amount they owe the farmer, in terms of the number of bags and the current prices, become apparent. Nonetheless, the fact that the amount of the debt due is not ascertainable at the time of signing the stop order does not necessarily prevent the assignment from being absolute because the first paragraph of the stop order reads that the farmer "hereby assign unto The Agricultural Finance Company Limited ALL monies now in your hands or owing by you to me or hereafter coming into your hands or becoming due and

owing by you to me in respect of the surrender to you or the sale to you ...". In other words, by the stop order, the farmer purports to assign all the present and future money of the farmer to the AFC. But then the document continues to say that the marketing board or union should:

> "Hold the same unto the said company and its assigns by way of security for the payment of such sum or sums of money and the interest thereon as may from time to time be owing by me to the said company in respect of any loan or loan account granted or extended by the said company in consideration or partly in consideration of this stop order but not exceeding the total amount (in words) ... ."

In addition the farmer declares that "this stop order is irrevocable and that it shall not affect or be affected in any way by other security which the said Company may hold in respect of the said sum or sums".

There is no doubt that the document exists in written form and being addressed to the debtor, that is the marketing boards and unions is adequate notice of whatever it is supposed to effect. The question is whether it amounts to an absolute assignment. The document puts the assignor and assignee in a similar position as the parties in Hughes v. Pump House Hotel Company to the extent that from the first paragraph, all the money due now and in future is assigned for present and future debts, but by the second paragraph of the stop order the farmer would appear to have introduced a limitation as to the actual amount for which the assignment should be effective. The debtor to the farmer should not hold unto the Company, that is the AFC, an amount exceeding the sum stipulated in the stop order. In other words, the excess must be paid by the debtor to the assignor. Consequently this arrangement has more in common with Durham

Brothers v. Robertson which was held to be a conditional assignment. In addition, there is the principle that the assignment of a definite part of the debt and not the entire debt is not an absolute assignment.[187] Further, the second paragraph (quoted) might convey the impression that the assignment was only intended to be by way of charge and not as an absolute assignment. There are grounds, therefore, to conclude that under the stop order as presently framed, the farmer uses the debt more as security rather than an out and out transfer. The undertaking that the stop order is irrevocable in no way alters the legal effect of the document.

The stop order, therefore, does not create an absolute assignment and consequently is void as a statutory assignment. But equity will treat as done that which should have been done, and, therefore, the transaction is good as an equitable assignment of a legal chose in action. In such circumstances the assignee, that is, in our present case, the Agricultural Finance Company cannot sue solely in their own name but must join the farmer (assignor) either as plaintiff or as defendant together with the recalcitrant debtor. A serious problem that may arise in this kind of procedure is that where the assignor is made a party to the proceedings as the first plaintiff, the farmer may not co-operate and in such an event the accounts between the farmer and the debtor, that is, the marketing board or union will be difficult to verify. Equally, where the farmer is made a co-defendant to the suit, he may collude with the board or union to have the debt paid to him contrary to the provisions of the assignment. The basic problem is that the

law does not enable the assignee to ascertain the accounts regarding the transactions between the farmer and the debtor. As the marketing board and unions have to handle thousands of such stop orders in any given year and at different times of the year, their task is a difficult one. It is not surprising, therefore, that in some cases stop orders have been ignored by marketing bodies in their haste to pay farmers whose usual complaint is that they are not paid on time.[188] Another problem related to the effectiveness of stop orders is how to prevent private sales by farmers. Stop orders are lodged with the important marketing bodies, but this does not constitute notice to private traders who may purchase the produce of the farmer. The AFC could, undoubtedly, sue the farmer, but it has no access to the security. The conclusion is inescapable that the stop order is not an effective form of security to the AFC. The only consolation is that a farmer who has ignored the procedure should not expect to receive another loan, and, therefore, genuine farmers are unlikely to sell their produce privately.

4. Procedure for Loans

If the AFC is to serve subsistence and small scale farmers the procedure for securing loans must be simple and intelligible to the clientele. Unfortunately, this is not as easy as it may seem because of the need to get as much information about the applicant, his land and his

performance and future plans as possible. In a largely illiterate society such as Zambia's extra help is required to enable the farmer to complete the application form. As there are various kinds of loans - real estate or farm purchase loans, medium term loans, and seasonal loans, the details in the application forms and their complexity differ. The forms, however, make no clear-cut difference between medium term loans and seasonal loans. They are both referred to as "operating loan" applications but one is distinguished as a large-scale operating and/or farm development loan and the other form is simpler and is distinguished by the maximum amount of loan for which it can be used. As the real estate loan and the large scale loan can only be used by commercial farmers, no real problems arise, as these have access to expertise in terms of understanding the contents of the application forms.

The real estate loan application requires an individual applicant to provide personal information including citizenship, residence, details of work permit and other businesses in which the applicant is involved and his capacity in such businesses. It would appear from the nature of the details required that non-nationals are eligible to get a loan to purchase a farm, but since the Land (Conversion of Titles) (Amendment) Act of 1985, this aspect must be seen in the context of the severe restrictions imposed on the President's power to alienate land to non-Zambians.[189] A company is required to give details regarding particulars of its registration, directors, percentage of shares which are owned by Zambians, and enclose balance sheets, and memorandum and articles of

association. In both cases, that is whether it is the company or an individual, there must be details of the proposed farm programme for the following five years. The rest involves information regarding the applicant's farming experience - farm size, cropping performance and the machinery used. Particular stress has also been placed on crop marketing arrangements and the purposes for which the loans are required. The application form for large scale loans are in many respects similar to the above, except that for applications for large-scale loans the previous performance of the farmer must be shown including the names of organisations in whose favour stop orders may have been registered. Despite the exhaustive detail required in both application forms, the AFC runs little risk as adequate security will, normally, have been provided. The major problem lies with subsistence farmers who are unable to provide adequate security and in respect of whom, therefore, the viability of the project is the crucial element that should ensure that the farmer will have sufficient resources to repay the loan.

The application form most relevant for subsistence farmers is the one for an operating loan of up to K5,000.[190] It is divided into four parts - two of which must be completed by the applicant and the other two by an agricultural officer. Part I concerns general personal information, but also requests details of where the applicant intends to sell his produce, the location of his farm, size of cleared land, and the crops currently being grown. Part II requires the applicant to give details of the purpose of the loan, and the farmer's own financial

contribution. Part III requires the agricultural officer to confirm the exact area of cleared land available to the farmer, the implements the farmer uses and an inventory of those he owns. Other details concern the farmer's performance in two previous seasons, planting dates, mode of weed control, and the number of livestock owned by the farmer.

Whereas Part III is purely a factual report, Part IV involves a high degree of evaluation on the part of the agricultural officer. The agricultural officer is required to comment on the amount of the seasonal loan that the farmer has applied for, any other items apart from seed, fertilizer and pesticides, which the farmer may require, and finally any other information the agricultural officer may have regarding the application. Every application must, in the first instance, be submitted either to the District Advisory Committee or the Ward Development Committee which considers the application, unless where the sum applied for is above its monetary limit in which case it will make its comments and pass on the application to its superior authority.[191]

The task of the District Development Committee, in the case of commercial farmers and Ward Development Committees is to consider the application in terms of the economic viability of the project. For instance, where the farmer wishes to grow rye, instead of maize, the relevant committee must determine the marketing prospects of the crop, the economic benefit to the farmer, and the national need for the crop. The committee has also to evaluate the farmer's capacity to run the farm not only in terms of preparedness

but also his personality.[192] In order to help the committee focus attention on the crucial elements on which its evaluation must be based, a certificate of eligibility or non-eligibility form which must be completed by the committee has been introduced.[193] In this form it is expressly provided that to satisfy the eligibility requirements the applicant must:-

> "a) Be a citizen of Zambia, or a Zambian resident and must be residing in the Ward area.
> b) Possess legal capacity to incur the obligations of the loan - that is, the applicant must be over twenty-one years old.
> c) Be an individual who has farm background and either training or farming experience sufficient to assure reasonable prospects of success in the proposed farming operations. However, an applicant who is already in full time employment or holding a Government post would not be eligible even though he meets other requirements as to farm background, experience and training.
> d) Possess the character, ability and industry necessary to carry out the proposed farming operations and honestly endeavour to carry out the undertakings and obligations required of him in connection with the loan."

Where the committee does not approve the application it must give reasons for its disapproval. Presumably this is to enable the provincial office to review the application in the event of an appeal against the decision of the committee.

5. Performance - Problems and Achievements

The overall performance of the Agricultural Finance

Company is examined in two major respects - capital and its sources, and loan recovery. The former affects the extent to which the AFC has been able to fulfill its obligations in the light of increasing demand on its financial resources. The latter, that is loan recovery, concerns the methods of loan recovery and the problems that the AFC has encountered over the years. In the light of the above mentioned factors an attempt is made to assess the role that agricultural credit as provided by the AFC has played in the fostering of agricultural development.

(a) Capital and its Sources

The AFC's first source of income was the sum of K23 million that was owed by farmers to the defunct Credit Organisation of Zambia.[194] In its first year of operation it dispensed K8.4 million and the following year the figure increased to K11 million.[195] Both these sums were secured as government loans. The amount of loanable funds increased to K32 million in 1977, but the following year on account of government withdrawal of its K5.5 million subsidy only K22 million was approved for loans.[196] This figure was subsequently reduced to K15 million for the 1978/79 season.[197] By this time it was becoming increasingly clear that the funds at the disposal of the AFC could never meet the demand for credit. In 1978 K84 million worth of applications for agricultural loans were received, and since only K22 million could be given, there was, already, a shortfall of K62 million.[198] The position had not improved much by 1982 as out of a demand of K74.6 million only K31

million was disbursed.[199] It was accepted during this period that the inadequate availability of funds "had a restraining effect on the Company's operations".[200] In fact discussions had begun between the AFC and the Ministry of Agriculture and Water Development under the sponsorship of the Director-General of the Zambia Industrial and Mining Company (ZIMCO) to which the AFC was later to be transferred, to locate sources of funds for lending in the ensuing 1982/83 season.[201] As the financial problem escalated the AFC made use of its power to raise funds from non-government sources and secured K35 million at an interest of 10.5 per cent from the following commercial banks in the 1983/84 financial year:[202]

Bank of Credit and Commerce	K.10 million
Standard Bank	7 million
Barclays Bank	7 million
Zambia National Commercial Bank	5 million
Grindlays Bank	3 million
CitiBank	3 million

As management had been authorised to raise up to K37 million another two million was still being awaited. The idea was to enable the company to increase its loanable funds to K60 million. The following year the lending limit was reduced from K60 million to K30 million as there were no new loans secured from commercial banks, and hence, the Board authorised management to borrow from any financial institution to the extent of K43 million.[203]

As the AFC begins to rely more and more on commercial banks for its loanable funds the cost of lending to farmers will increase. In 1983/84 when the company had had to borrow at 10.5 percent interest, it was lending at an interest of only 12 percent, a mere difference of 1.5

percent. The 12 percent interest applied irrespective of whether the loan was seasonal, medium or long term. Considering the fact that the money the AFC had borrowed was a seasonal loan, it had to lend the money as a seasonal loan with all the risks attaching to recipients of seasonal loans - the subsistence farmers. At the rate of interest it charged, it is hardly possible the risk was covered, let alone the administrative costs. If the AFC is expected to run on economic lines, it will have to charge an interest which must cover the administrative costs, the risk involved in terms of the actual provision for bad debts, as well as a certain amount of profit which will not only enable its services to increase, but also meet the demand for credit which has, by far, outstripped supply. It is possible that inspite of increased demand, the number of deserving applicants has not increased to the same extent, nonetheless, even using the increasingly more strict criteria necessitated by shortage of funds, the actual amount of loans approved does not always coincide with the actual sum of money disbursed. As a result the AFC has been indebted to various companies, such as the National Agricultural Marketing Board, which provide requisites to farmers on the strength of Local Purchase Orders issued by the AFC. But it may be argued that shortage of funds could have been limited if loan recovery had been exceptionally good.

(b) Loan Recovery

Loan recovery is inter-twined with the question of

security. Overall, the performance has been better than its predecessor, the COZ, but losses have continued to be incurred. In 1977, the AFC made a loss of over K5 million and this increased to over K8 million in 1978 bringing overall accumulated losses to K15.7 million from the date of the company's incorporation.[204] The rate of debt collection was a disappointing 52% against the loans due for recovery. In consequence, the Board directed management to put more emphasis on recovery as the company would have to depend on recoveries for its loanable funds, and ruled that no fresh loans should be granted to those who had loans outstanding.[205] The position was no better in 1982 as the company made a further loss of K8.7 million,[206] bringing the accumulated total of outstanding loan recoveries to K90 million.[207] In 1983 there was an even worse record. The AFC made a loss of K19.636 million.[208] The Chairman of the corporation emphasised the need for management to "intensify the recovery efforts and more importantly to make some changes in the area of credit assessment if the recovery problem" is to be settled.[209] It was at this stage that the Board of Directors considered whether the AFC should continue to lend money, mainly to small-scale farmers.[210] It was resolved that no changes should be made until further statistics were provided.[211] In 1984, an all-time record of K25 million of loss was incurred by the AFC, against a total group loss of K31 million.[212] It was against this background that the holding company, the RDC, was dissolved and the AFC became a subsidiary of ZIMCO.

At various stages, different reasons have been given to account for the low recovery rate. In 1978, the issue of

corruption was raised. An officer of the AFC, misused money received from the company's borrowers who had paid him in ignorance of the fact that he was not authorised to accept payment.[213] This is, of course, an isolated case, the more common reasons being that (1) the National Agricultural Marketing Board has not consistently honoured stop orders.[214] This is, in itself, a reflection of the looseness of the relationship between the AFC, and the marketing bodies. Even where an agricultural charge has been made, where prosecution has taken place, the penalty for its breach has been said to be minimal.[215] (2) Drought has affected the productivity of the farmers.[216] In an effort to reduce the impact of drought on its financial position, the AFC insured the crops of its clients cultivating fifty hectares or more during the 1981/82 season by paying K1.2 million to the Zambia State Insurance Corporation.[217] (3) High interest charges by commercial banks on whom the AFC has increasingly come to depend have had an adverse effect on the fortunes of the AFC.[218] (4) The AFC had extended many seasonal loans "without adequate tangible security for loans. The security was mainly based on expected income instead of tangible collateral".[219] But even where security has been given, non-economic considerations get in the way of realising the security. The exercise of foreclosure against influential commercial farmers with political ties is a difficult task. Nonetheless, in 1983, twelve farms valued at over half a million kwacha were re-possessed.[220]

In the circumstances the AFC has responded in a variety of ways to reduce its recurrent losses and improve its

financial image. Its first step has been to concentrate loans on those farmers who are already well-established.[221] Emphasis has been placed on past records - how much the applicant has, in the previous seasons, sold to marketing bodies. The effect of this approach, as Harvey has stated, is to reduce sharply the number of farmers reached by the AFC.[222] Consequently, the AFC no longer sees credit as the all-important initiator of agricultural development but as an accelerator of agricultural production.

E. THE ZAMBIA AGRICULTURAL DEVELOPMENT BANK

The Zambia Agricultural Development Bank (hereinafter referred to as the ZADB) is the second government-owned credit institution. It commenced business in 1983.[223] The ZADB was estabished by the Zambia Agricultural Development Bank Act, 1979[224] whose date of commencement was 1st July, 1981,[225] the delay in the commencement of the bank's business having been caused by a delay in its capitalisation.[226] The establishment of the ZADB raises two important questions, one relates to the form by which it was created and the other to its role in the provision of credit. Unlike the AFC, the ZADB is a statutory body. One of the reasons suggested for the fact that the AFC is not a statutory body was that government interference should be minimal. Whether this is the case, in practice, is

doubtful, but in the discussion that follows it will be important to bear in mind the relationship between the government and the ZADB in so far as the same may affect the operations of the Bank.

The other question raised by the establishment of the ZADB is its actual role given the fact that so far the AFC has been and continues to extend credit to both commercial and small scale farmers. The intention of government might have been to operate two credit institutions. If that were the case, however, it would have been proper to delineate the range of farmers to be served by each institution. It appears from Parliamentary Debates that the real intention was to merge the AFC and the Cattle Finance Company to form the ZADB. Instead of a merger of the two companies, however, the ZADB assumed a completely independent existence. A different line of approach has been suggested by the Bank of Zambia, which has stated:

> "As part of the efforts to strengthen agriculture, the new Zambia Agricultural Development Bank, which became operational in 1983, will undertake direct lending to large-scale farmers. The Bank will also engage in technical supervision of these farmers and provide extension services."[227]

If this is the real role of the ZADB the consequences to the AFC would be disastrous as it would be deprived of its only profitable source of income. The bias towards large scale farmers does not appear from the Act establishing the Bank, however, but from the regulations governing the credit policy. With the above few comments, attention will now be focussed on the constitution of the Bank, its objects and powers and its performance during the first year of its lending operations.

1. Organisational Structure

Section 3 of the Zambia Agricultural Development Bank Act establishes the Bank as a body corporate with perpetual succession and a common seal capable of suing and being sued in its own corporate name. At its head is the Board of Directors "responsible for the policy and the administration of the affairs and business of the Bank".[228] The constitution of the Board is ten - the Chairman and three other members are appointed by the Minister of Agriculture and Water Development, the other six members are appointed by the shareholders. The tenure of office of the members is three years but they are eligible for reappointment. The Board may appoint such number of committees from amongst its members as it may deem necessary, and it may delegate to such committees any of its functions under the Act.[229] In its early stage, the administrative structure has not developed to any appreciable extent. There are no district offices, and, therefore, no committees at district level to attend to applications.

2. Objects of the Bank

The business of the ZADB is stated to be:

"a) to provide loans or any other form of credit facilities to any person, company, statutory corporation, local authority, association, co-operative society, the Government or any other institution approved by the Board for any agricultural or fishing project;
b) to do all other matters and things incidental to or connected with the foregoing."[230]

In a broader context the objective of the Bank is said to be to increase agricultural and fisheries output by improving productivity, thereby increasing the incomes of the farming and fishing communities.[231] This objective is to be attained through both financial and technical support to farmers and fishermen of all classes. The Bank should attach great importance to technical supervision of its projects through extension services to facilitate better use of inputs.

To enable it to pursue this objective the Bank is empowered to exploit various sources of funds. In addition to its authorised capital of K75 million,[232] the Bank may have, from time to time, money appropriated to it by Parliament, or raise money through loans.[233] With the approval of the Minister responsible for finance the Bank may raise additional funds by:

a) obtaining overdrafts from other Banks,
b) receiving moneys on deposit, and
c) any other method of which the Minister responsible for finance may approve.

At the time of commencing its operation, the Bank received K1 million from the government as its initial capital. This amount proved to be too small, and after a joint concerted effort by the Ministry of Agriculture and Water Development,

the Ministry of Finance and Cabinet Office, a loan of K10 million was obtained from the Bank of Credit and Commerce and the Zambia National Commercial Bank, under a government guarantee.[235] The government contribution is to constitute part of its alloted share capital of K35.25 million or fifty-one percent of the shares. The other shares are expected to be taken up by local institutions, to the extent of K14.25 million or nineteen percent, and international institutions to the extent of K22.50 million or thirty percent.[236]

3. Loan Eligibility

Article 7 prescribes the range of persons who may apply for loans from the Bank. In general, any person (or body corporate) who is a farmer or intends to become a farmer on a full-time basis may borrow from the ZADB. However, the Bank will not extend a medium or long term credit unless it is fully satisfied that the applicant has contributed from his own funds an amount of up to twenty percent of the total resources requested to finance the project.[237] Loans are to be directed, primarily at farmers and fishermen, and co-operative institutions. Nonetheless, private and public corporations may borrow from the Bank if they are autonomous financial and administrative entities engaged in development activities relating to agriculture and fisheries. In exceptional circumstances the Bank may consider applications for financial assistance from part-time farmers who qualify

in all other respects and are already in occupation of a viable piece of land. In such cases, the Bank has to be satisfied that farming operations will be adequately supervised, pending the owner's assumption of full-time farming. This concession was intended to benefit owners of smallholdings and medium sized farms on the outskirts of major towns who are in full-time employment.

4. Security for Loans

Section 19 states that a loan may be granted on any of the following types of security:

(a) a mortgage on unexhausted improvements on land within Zambia;
(b) stop order on crops or bank accounts;
(c) bills of sale or agricultural charge created under the Agricultural Credits Act; or
(d) any other security prescribed by the Board.

The property offered as security may be owned either by a prospective borrower or a third party, provided that such party gives his consent in writing to pledge his property. For purposes of determining the value of the security offered by the borrower a number of principles have been established. These principles are contained in a document in which the Bank has spelt out its lending policy.[238] These principles are that (a) machinery and equipment should be valued at cost of manufacturing or purchase, less depreciation, or their market value; (b) that negotiable assets such as goods in stock, securities and company shares

should be estimated on the basis of cost or market prices whichever is the lesser; (c) land, buildings and other construction works should be estimated on the basis of either government assessment for tax purposes, or the Bank's own direct valuation, and (d) perishable goods, unless insured to their full value against appropriate risks, should be irrelevant to the borrower's credit worthiness.

5. Performance

At this early stage, it is not possible to assess the impact of the bank on the credit scene, nevertheless some general observations may be made. From its document on lending policy, the bank appears to have been launched with greater foresight and more precise operating rules than the AFC, and indeed any previous credit institution. By December 31st of 1983, the bank had handled no less than 140 loan applications, 51 such applications were rejected, 88 were still under consideration, and a block loan of K1,249,057 to the Zambia National Service Co-operatives were approved.[239] The block loan was intended to assist 51 of the Zambia National Service's Co-operatives to purchase inputs for growing 3,500 hectares of maize and 1,220 hectares of sunflower. This was within a month after the bank's commencement of business. It is apparent, however, that small scale farmers can be assisted only if they are a part of a co-operative society or other agricultural scheme. This inference is drawn from the fact that although the ZADB

provides for the grant of credit on the security of a stop order, which is the easiest security and, therefore, available to small scale farmers, the regulations covering the bank's credit policy make no reference to stop orders and the whole modicum of operational rules are more relevant to commercial farming. This is inspite of the bank's express commitment that the bulk of its clientele will be small holders. The bank goes on to say:

> "In order to adequately support them technically and financially, the Bank has tailored a lending strategy which will facilitate reaching them through geographically-designed areas called operational zones."[240]

It is not clear what criteria will be used to determine the selection of these operational zones, but if these zones are to be selected in the same manner as the Intensive Development Zones established under the Second National Development Plan, not only will the number of farmers served be restricted, but on a country-wide basis, the areas to be covered will be very few.

F. CONCLUSIONS

While there is general agreement regarding the importance of credit to the development of agriculture there is no agreement as to the stage at which it should be made available. The present practice among financial

institutions that lend on the security of stop orders is to insist on the production of records of previous sales to marketing bodies. This means that financial assistance is only available where the farmer has already reached the stage of producing a surplus. This approach excludes all subsistence farmers, strictly so-called. The application of more rigorous criteria to assess credit worthiness arises from Zambia's poor credit record as exemplified by the defunct COZ.

The case for specialised credit institutions in Zambia is stronger because of the restricted role of commercial banks and credit unions in the dispensation of agricultural loans. There is no doubt that the AFC and the ZADB will continue to render invaluable service to commercial as well as small scale farmers. There are very few districts where the AFC, the older of the two, has not established a branch or an agency. Four provincial branches have been said to be unviable due to the low finance absorption. This calls for further improvement in the infrastructure including transport and marketing. The problem of what security should be required will continue to be a subject of debate. After some initial laxity in the assessment of credit worthiness, the AFC has become more tight-fisted, especially, in the light of financial constraints. There are various forms of security, the most reliable being land. Its importance has diminished since the Land (Conversion of Titles) Act, while customary land has never been used as security. The agricultural charge offers little protection to the lender and the stop order whose legal significance is not clear is no security at all. Nonetheless, in the quest

for security, sight should not be lost of the fact that the greatest security, after all, is the honesty and the integrity of the borrower. This is all the more so as even where a mortgage has been made, the value of the unexhausted improvements against which the mortgage operates may depreciate and, where the borrower does not remedy the situation, the security may be lost.

On the existence of two credit institutions both serving the agricultural sector, it is important for government to spell out which category of farmers or loan purposes each is to serve. At present both purport to be serving all kinds of farmers although the emphasis on the ZADB on "projects" and "enterprises" gives the impression that it is more concerned with the commercial farmers. Nevertheless, it is important for government to delineate areas of operation between the two institutions because government policy statements gave the impression that the ZADB would be an amalgamation of the existing credit companies. The fact that such amalgamation has not taken place has not, however, dispelled the doubts which hang on the future of the AFC as such. Such doubts will create a feeling of insecurity on the part of the staff which in turn may lead to poor morale and ultimately poor performance. It is also obvious that a duplication of energy is bound to result from the present situation.

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47. S.22.

48. S.2.

49. Ibid.

50. S.24.

51. S.9A(1).

52. S.9a(4).

53. S.9B(4).

54. S.9E(2).

55. S.9E(1).

56. S.9E(3).

57. S.9E(5).

58. S.9F.

59. S.32(1).

60. S.32(2).

61. Rural Development Corporation, Annual Report, 1984, p. 12.

62. No. 54 of 1967.

63. S.3.

64. S.4.

65. S.5.

66. Land and Agricultural Bank Act, S.5(g).

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68. See for instance G.N. No. 1908 of 1968.

69. S.28(d).

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73. Harvey, C.R.M., "Financial Constraints on Zambian Development", in Elliott, C., (ed.), Constraints on the Economic Development of Zambia, (Oxford University Press, Nairobi, 1971), p. 138.

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80. Hansard, No. 21bb, Tuesay, 17th March, 1970, Col. 2035.

81. Ibid., Col. 2036.

82. Wilson provides a table adapted from publications of the Central Statistical Office and the Bank of Zambia which may support the view that the decline coincided with the loss to the country of many commercial farmers during the first five years of independence: Wilson, F.A., "The Role of A Non-Specialist Credit Agency - The Commercial Bank in Zambia", in Wilson, F.A., and Amann, V.F. (eds.), Financing Rural Development, Proceedings of the Eastern Africa

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83. Republic of Zambia, Ministry of Development Planning and National Guidance, Second National Development Plan (Government Printer, Lusaka, 1971), p. 74. There had been an earlier attempt by government to purchase shares in some commercial banks in an effort to re-direct their priorities: Kaunda, K.D., Zambia's Economic Revolution, op. cit.

84. Letter from CitiBank to the Director of Research, Bank of Zambia, dated 15th January, 1985.

85. The figures are derived from returns submitted to the Bank of Zambia by the CitiBank.

86. Memorandum No. 2 to the Board Advances Committee submitted to the Bank of Zambia.

87. For example in 1983, the Zambia Agricultural Development Bank made loans totalling 11 million kwacha according to its annual report, while the AFC had K60 million at its disposal, the total of which came to 77 million kwacha. Sources: Zambia Agricultural Development Bank, Annual Report, 1983, p. 9, Rural Development Corporation of Zambia, Fifteenth Annual Report, 1984, p. 7, and the Bank of Zambia.

88. Wilson, F.A., op. cit., p. 77.

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90. S.3.

91. Mkandawire, R.M., "Customary Land, the State and Agrarian Change in Malawi: The case of Chewa Peasantry in the Lilongwe Rural Development Project", Journal of Contemporary African Studies, 1983, 3, 1 and 2, 127.

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97. Ordinance No. 28 of 1961.

98. Ordinance No. 9 of 1963.

99. S.3(2).

100. S.2.

101. S.3(2).

102. S.3(4).

103. S.3(3).

104. S.4(1).

105. S.4(2)(a).

106. S.4(2)(b).

107. S.4(3).

108. S.4(4).

109. S.10.

110. S.4(5).

111. A debenture is a document which creates or acknowledges a debt. As such a debenture holder is a creditor of the company and the interest on the debenture is payable whether or not the company has made a profit.

112. S.5.

113. Ibid.

114. S.6(8).

115. S.6(7).

116. S.9.

117. S.7(6).

118. Wilson, F.A., op. cit., p. 78.

119. S.2.

120. Ministry of Lands and Natural Resources, Annual Report of the Lands Department, 1970, (Government Printer, Lusaka, 1972), p. 7, Table 5.

121. See for instance Halubobya, A.J., "Agricultural Production Credit through Credit Unions", Paper prepared for the East African Agricultural Economics Society Conference, Lusaka, Zambia, May, 1974.

122. Lombard, S.C., The Growth of Co-operatives in Zambia, 1914-1971, (University of Zambia, Institute for African Studies, Zambian Papers, No. 6, Manchester University Press, Manchester, 1971), p. 17.

123. Republic of Zambia, Department of Marketing and

Co-operatives, Annual Report for the Year Ended 31st December, 1980 (Government Printer, Lusaka, 1982), p. 12.

124. Provincial Marketing and Co-operative Officer's Conference held 10th to 12th January, 1983. Eastern Province Report, ref. M.C.E./104/2/2/9, p. 4.

125. S.10(1). Co-operative principles are statutorily defined in section 2 as including the principles that each member has one vote; no voting by proxy; membership is open to any interested party; the services are mainly for its members; the dividend on share capital should not exceed six percent per annum; and that the services are made available as nearly as possible at cost.

126. By-laws are the operational rules of the society. They are passed by the members and approved by the Registrar.

127. S.11(1).

128. S.11(2).

129. S.11(3).

130. S.11(4).

131.

132. S.13.

133. S.53.

134. S.56(1).

135. S.57.

136. S.58(1)(a).

137. A special resolution is defined under section 2 as a "resolution passed by a three-quarter majority of the members ... present at a meeting of a society called for the purpose, and of which at least twenty-one clear day's notice in writing was given together with a copy of the proposed resolution."

138. S.58(3).

139. Rule 61 of the Co-operative Societies Rules, S.I. No. 39 of 1972.

140. S.64(4) and (5).

141. S.64(6).

142. S.64(8).

143. Lungu, M., "Co-operative Efficiency in Zambia", in

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144. Ibid.

145. Lombard, S.C., op. cit., p. 17.

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147. Ibid.

148. Ibid., Annual Report for the Year Ended 1980, (Government Printer, Lusaka, 1982), p. 27.

149. Ibid., Annual Report for the Year Ended 1981, (Government Printer, Lusaka, 1983), p. 32.

150. Ibid., pp. 32-42.

151. Credit Organisation of Zambia (Dissolution) Act, No. 15 of 1970, section 9.

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153. Rural Development Corporation of Zambia Ltd., Annual Report and Accounts for the Year Ended 31st March 1983, p. 3.

154. Ministry of Development Planning and National Guidance, The Second National Development Plan, (Government Printer, Lusaka, 1971), p. 93.

155. Ibid.

156. Interview with Legal Counsel for AFC, Kulima House, Lusaka, 28th January 1985.

157. Articles 54 and 55 of the Articles of Association.

158. Articles 72 and 73 of the Articles of Association.

159. See for instance the Minutes of the 140th Meeting of the Board of Directors held on the 15th of September, 1982.

160. Interview with Mr. Abel Chishimba, AFC, Loans Officer, Kulima House, Lusaka, 28th January 1985.

161. Ibid.

162. Interview with AFC Legal Counsel, 28th January, 1985.

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181. Ibid., p. 497.

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184. Durham Brothers v. Robertson, op. cit., p.774.

185. The Supreme Court of Judicature Act, 1873 has legal force in Zambia by virtue of the English Law (Extent of Application) Act, Cap. 4 which makes English Acts passed before 1911 applicable. For a discussion of this statute see Chapter One.

186. Performing Rights Society, Ltd. v. London Theatre of

Varieties Ltd., [1924] A.C. 1.

187. Williams v. Atlantic Assurance Co. [1933] 1 K.B. 81.

188. For instance the RDC's Managing Director's Report stated in 1978 that one of the reasons for the poor recovery of debts by the AFC was that the National Agricultural Marketing Board did not honour some stop orders and paid the farmers the entire sum: Rural Development Corporation, Annual Report, 1978, p. 2.

189. Detailed discussion of this Amendment Act is contained in Chapter Two.

190. Form 410-1A, 1977.

191. Interview with Mr. Andrew Nyirenda, AFC Loans Officer, Choma Provincial Office, Southern Province, 13th March, 1985.

192. Ibid.

193. Form 410-5A.

194. RDC, Annual Report and Accounts for the Year Ended 31st March 1982, p. 16.

195. Dixon, C.L., op. cit., p. 13.

196. Minutes of the 84th Meeting of the Board of Directors of the AFC, Thursday, June 15th 1978, Minute No. 16/78.

197. Minutes of the 85th Meeting of the Board of Directors of the AFC, Thursday, 20th July, 1978.

198. RDC, Annual Report, 1978, "Report of the Managing Director", p. 2.

199. RDC, Annual Report, 1982, p. 6.

200. Ibid.

201. Ibid.

202. Minutes of the 145th Meeting of the Board of Directors of the AFC, Monday, 19th December, 1983.

203. Minutes of the 148th Meeting of the Board of Directors, Tuesday, 2nd October, 1984.

204. RDC, Annual Report, 1983, p. 4.

205. Minutes of the 84th Meeting of the Board of Directors, op. cit., Minute No. 15/78.

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207. Minutes of the 140th Meetings of the Board of Directors of the AFC, Wednesday, 15th September 1982.

208. RDC, Annual Report, 1983, p. 4.

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215. In its 1984 Annual Report, the RDC stated: "The stop order system was not as effective as expected because the Marketing Unions did not strongly feel that they were legally bound to recover loans and even if the Co-operative Unions deliberately defaulted in recovering loans, the penalty was only K1,000 fine through the courts.", p. 7.

216. Minutes of the 145th Meeting of the Board of Directors of the AFC, Monday, 19th December, 1983. The Chairman of RDC's statement in the 1983 Annual Report of the RDC reads "drought experienced for the past two seasons has meant very low production and consequently the loan recoveries by the AFC have been disappointing", p. 4.

217. Minutes of the 139th Meeting of the Board of Directors of the AFC, Friday, 2nd July 1982.

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219. RDC, Annual Report, 1984, p. 7.

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221. Interview with AFC Provincial Manager, Eastern Province, Chipata, 26th March, 1985.

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224. No. 18 of 1979.

225. The Zambia Agricultural Development Bank Act (Commencement) Order, S.I. No. 85, 1981.

226. ZADB, Annual Report, 1983, p. 7.

227. Bank of Zambia, Republic of Zambia Financial Report, June 1984, p. 6, para. 14.

228. S.4.

229. S.9.

230. S.18.

231. ZADB, Develop and Prosper: Terms and Conditions of Financing; see also Annual Report, 1983, p. 3.

232. S.14.

233. S.15.

234. S.16.

235. ZADB, Annual Report, 1983, p. 9.

236. Ibid., p. 3.

237. ZADB, Credit Policy, Article 3.

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239. ZADB, Annual Report, 1983, p. 7.

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CHAPTER FIVE

STATE CONTROL OF THE PRODUCTION AND THE MARKETING OF AGRICULTURAL COMMODITIES

A. INTRODUCTION

The previous chapters examined the law relating to the development of agricultural land and the financing of the agricultural development of such land. The land reforms introduced in 1975 were geared towards extending State control to unscheduled land. On Reserves and Trust Land some limited control is exercised through State grants of leases and licences. State intervention in the provision of credit has been intended to control the direction of the cash flow in favour of agriculture as opposed to manufacturing industry, and within the agricultural sector, in favour of the small scale farmer. It is also significant that the promotion of cash crops has been achieved by making credit available for their production and withholding credit in respect of the production of other crops. This chapter examines the regulation of the production and marketing of agricultural produce. Such control is being exercised through statutory boards whose prominent features are the extent to which government controls their operations, their wide powers, the exclusion of the judiciary in the determination of disputes between the farmers or dealers and the boards, and the criminal sanctions attached to the contravention of the regulations. As State control is being exercised through the boards, the rationale for such control

is interwoven with that of the existence of the boards themselves.

Government control through statutory bodies takes the form of the licensing of growers, dealers and graders of agricultural produce, the determination of producer prices and the marketing of the produce. State control of the production and marketing of agricultural commodities such as maize, tobacco, cotton and other cash crops has a long colonial history. Statutory bodies still remain a feature of the marketing of agricultural commodities. Recently, however, there has been a gradual shift in emphasis from statutory bodies to co-operatives and specialised companies. This change has been prompted by the inability of the statutory bodies to cope with their wide responsibilities. The problems which have faced these statutory bodies, and thus the exercise of control by the State arises from the relationship between the statutory bodies and the government which has robbed the bodies of the incentives to achieve operational efficiency.

1. The Role of Government in Marketing

At the root of the issue of marketing in Zambia, as in other African countries, has been the role of government in the marketing process. From the broad nature of services that marketing incorporates, has arisen the need for government to intervene, directly or indirectly, in the marketing of agricultural products. The services falling

under marketing have been said to include the establishment of rural buying centres at which produce can be purchased from farmers, the transportation of such produce from the rural centre to the consuming centres in urban areas and other deficit rural areas, the initial processing, grading and packing of such produce, the actual pricing and selling of the produce, and the establishment of storage facilities particularly where immediate re-sale is not practicable or where the produce is perishable.[1] In order to be able to provide these services efficiently, the marketing agency must have access to information, both about the prospects of future demand and about the internal and external outlets for commodities, and must be able to generate sales through effective techniques, sales and advertising.[2]

In determining what marketing system is suitable for the rural areas four options may be considered. These are: (a) private enterprise, (b) government direct purchase schemes, (c) co-operative societies, and (d) government statutory boards. Each of these systems of marketing has its advantages and disadvantages. These aspects were discussed by the Rural Economic Development Working Party set up in 1961 whose terms of reference included marketing.

(a) Private Enterprise

Examining the system of marketing through private enterprise, the Working Party noted several advantages. Private enterprise would not only provide a more flexible mechanism for price adjustments, but would have the added advantage of being free from political influence. The

Working Party noted that "attempts to cushion the producer from fluctuations in prices, which are invariably made when the Government becomes involved and political factors can be brought into play, but which reduce efficiency and weaken the national economy in the long run, are avoided."[3] Further, the Working Party noted, if private enterprise is encouraged, specialised trading activities may develop to serve the agricultural industry. Such traders can perform an important service in taking the risk of price fluctuations, the development of new markets for the products, and in the supply of agricultural inputs required by the farmers.

Against these advantages, however, are disadvantages which appear to have played a more important part in determining government policy. Private enterprise cannot, it is argued, be relied upon to give a fair deal to the primary producer; and the mere fixing of minimum prices is not adequate to save farmers from exploitation (in the pejorative sense) by traders.[4] Another disadvantage is that private traders will not interest themselves in areas where production has not reached a figure which would make marketing viable. Such areas will be shunned by traders and thus further depress the incentive to farmers to increase production. Further, the Working Party noted that private traders would be more inclined to operate in areas where their profits would be highest and where transport and other infrastructure have already been developed by government, and since remote areas have insufficient infrastructure, such areas will not be covered by traders. In spite of such disadvantages, the Working Party felt that private

enterprise still had a role to play in marketing:

> "... Where a crop or product is of a specialised nature, such as, for example, premium groundnuts or dressed poultry or beeswax, private enterprise, which has its own ways of seeking out the small and highly lucrative markets which exist for such products, should be left to arrange the marketing, subject to such Government supervision as may be desirable in the interests of the producers. In such circumstances, if private enterprise is able to compete adequately with the marketing of the product it should be encouraged to do so and the whole field should be left to its control."[5]

Even outside this scope, there is still room for private enterprise since statutory marketing boards, wherever they have been established, handle certain crops only while the rest are left to private traders. This is the case in Zambia, where statutory marketing boards have been established, a number of crops are not handled, notably cassava, which is the popular staple crop in three of the country's provinces, Northern, Luapula and North-Western Provinces.[6] In spite of the shortcomings of private enterprise, therefore, the private trader has a role to play.

(b) Government Direct Purchase Schemes

The Rural Economic Development Working Party recognised the need, in the absence of any other marketing organisation, for government to purchase crops whose growth it has encouraged and to market them itself. Such a method should not generally be adopted as past experience had shown that it has led to wastage and inefficiency. In addition, other factors rendered this option unpopular. The

government is bound to be influenced by political considerations in setting the price, while the organisation of marketing will be time-consuming to field officers whose attention should be confined to the encouragement of other crops. In the circumstances, the Working Party felt that while special circumstances may warrant the establishment of government purchase schemes, the operation of these schemes should be temporary, pending the adoption of other alternative systems of marketing. These arguments against government purchase schemes have been borne out by recent efforts by government to establish a direct purchase scheme for cassava in the Northern Province, between 1980 and 1981. The scheme proved a failure "due to some technical problems that developed during the process in the rainy season".[7]

(c) Producer/Marketing Co-operatives

It is argued that if producers could organise themselves and market their own produce, this would enable government assistance or participation in the marketing operation to be minimised.[8] While the Working Party welcomed such a development, it recognised that marketing was a specialised business which producers were not often qualified to undertake. Besides, it added, African rural producers were too numerous and too weak in organisation to undertake the responsibilities involved. Organising these producers into co-operative societies would help in view of the arguments in favour of co-operative societies that:

i) their democratic organisation brings a sense of participation to the producer and minimises the censure which a government controlled organisation may

expect to encounter in times of falling prices;

ii) it provides valuable training in business and business organisation;

iii) it retains profits in the interests of members and secures for them the best possible prices, thus strengthening the bargaining position of farmers vis a vis commerce generally; and

iv) it can organise guaranteed markets for the producers and integrate marketing with production more closely.

Despite these advantages on which the Department of Co-operatives and Marketing laid emphasis, the Working Party was reluctant to recommend any development of co-operatives on the grounds that the existing ones in the Eastern Province were proving too costly.[9] Since independence, however, efforts have been made and continue to be made to encourage co-operatives with the emphasis, in the early stages, on producer co-operatives, and more recently on marketing co-operatives.

(d) Government Statutory Boards

Statutory marketing boards have become very popular with African governments, but their roles have differed from one country to another. In some countries, statutory boards have used co-operatives and private traders as agents to purchase the farmers' produce or distribute farm inputs. In others, the boards have acted as residual buyers of specific crops at pre-determined prices. The nature of the role played by the statutory board and, therefore, the extent to which governments control the production and marketing processes depends on the reasons or justification for its creation. Various reasons have been given to justify

government intervention generally, and the establishment of statutory boards, in particular. The Working Party stressed three purposes which a statutory board should serve - the stabilisation of prices, the provision of incentives to farmers, and the promotion of certain crops as opposed to others. Stable prices, it said, are essential to the success of a rural development programme and, therefore, "There is a need, with a relatively weak and immature economy, to cushion producers from undue shocks, whether resulting from changes in overseas demand or from such internal causes as droughts, floods and diseases."[10] According to the Working Party, such protection could best be afforded only within the machinery of a government statutory board. In order to encourage production, it argued, minimum prices have to be stipulated in advance, and such stipulation can only be done where a statutory board is in operation, and not where a free market applies. The second justification was that a guaranteed market would be an incentive to the producer, because he would be assured, subject to quality, that the whole of his produce would be bought. This particular justification is also noted by Stutley of the Ministry of Overseas Development of the United Kingdom, although his views do not necessarily reflect those of the Ministry itself.[11] Further, government can, through its pricing policies, encourage the production of certain crops as opposed to others. The statutory board in such circumstances would act as an instrument of government policy, encouraging particular crops while, at the same time, discouraging over-production. Other reasons cited in support of statutory boards are that the controls

exercised through them could ensure the supply of food and the maintenance of national and regional reserves, the taking of profits which would otherwise go to the private trader, and the promotion of exports or the achievement of added value through processing.[12] According to the Working Party, statutory boards enjoyed the advantage of being flexible in their operation while their monopoly position would keep marketing costs to the minimum. Thus, it prescribed, "such boards should be as widely based as possible to minimise operating costs".[13]

Against this plethora of justifications is growing opposition to statutory boards in the light of their performance in various Third World countries. It is argued that as marketing in most developing countries is characterised by large transport costs, seasonality of production, access limited to certain times of the year (due to poor roads), and the small size of individual surpluses, government institutions have to have storage facilities which increases the operating costs.[14] Further, "the overhead costs of maintaining a permanent marketing or supply facility at primary level, as opposed to the establishment of a temporary buying point, tend to encourage the handling of a multiplicity of crops so as to extend the season of gainful operation as far as possible" with the result that one main crop indirectly subsidises the handling costs of others with a smaller turnover.[15] What appeared to the Working Party as an advantage, namely, the broad base on which the statutory board must operate to be effective, is seen as a weakness by others. It is also argued that there is a tendency to obscure the cost of the service and to

underestimate the trading skills required.[16] Stutley draws the conclusion that where, for some reason, government intervention is necessary, government should only undertake those functions which "private enterprise cannot or will not undertake at a reasonable cost, giving priority to those activities which they are in the best position to undertake".[17] In other words, government statutory boards should play a residuary role, and preferably of a temporary nature, pending the take over of marketing by private enterprise.

2. Background to Present Marketing Arrangements

At the time of independence, marketing was being conducted by co-operative marketing unions while State control was being exercised through statutory bodies, which also handled some agricultural produce. With regard to co-operative marketing unions, two in particular played an important role. These were the Eastern Province Co-operative Marketing Union, (an amalgamation of three small marketing unions established in 1957), now generally referred to as the Eastern Co-operative Union (ECU), and the Southern Province Co-operative Marketing Union. The shareholders of these unions were primary co-operative unions of producers in the rural areas. Maize, in both the Eastern and Southern Province, and groundnuts in the Eastern Province, were and still remain the major commodities handled by these co-operatives.[18] While these two

co-operatives operated in their respective provinces, government statutory boards tried to provide marketing services to cover the rest of the country. These were the Grain Marketing Board and the Agricultural Rural Marketing Board.

(a) Grain Marketing Board

The Grain Marketing Board, (hereinafter referred to as the GMB), was formed in 1964 as the result of the decentralisation of the Federal Grain Marketing Board which served both Northern and Southern Rhodesia following the dissolution of the Federation of Rhodesia and Nyasaland.[19] The Board consisted of five members appointed by the Minister responsible for agriculture. The Minister also appointed one of the members as Chairman. In addition to these members, the Minister could nominate an official from the Ministry of Agriculture to attend board meetings and take part in its proceedings as if he were a member. Members ordinarily held office for two years, although a retiring member could be re-appointed.

Among the functions and duties of the GMB were the following: to take possession of any "controlled produce"[20] vested in it under the provisions of the Act, to buy and sell any uncontrolled product offered to it for sale, to provide storage and handling facilities for controlled products, to import and export controlled products as it considered necessary, and to do "all things necessary and consistent with the provisions of the Act to ensure the orderly marketing of controlled products". A Government

Notice of 1964[21] declared maize, maize meal, shelled and unshelled groundnuts to be controlled products. The prescribed areas were the Eastern Province; the districts Chililabombwe, Kabwe Rural and Urban, Chingola, Choma, Kalulushi, Kalomo, Kitwe, Livingstone, Luanshya, Lusaka, Mazabuka, Mufulira, Ndola rural and urban and part of Mumbwa district. In addition the Board divested itself of flaked maize and any other product acquired by the government for the purpose of scientific research.[22] The 1964 list of controlled products remained in force until 1966 when a new list was issued.[23] This was, however, substantially the same except that groundnuts ceased to form part of controlled products, but was replaced by seed cotton. In a later statutory order, however, shelled and unshelled groundnuts were declared controlled products in the Eastern and North-Western Provinces.[24]

In April, 1967 a longer list of controlled products was issued together with their prescribed areas. The products included maize, maize meal, shelled and unshelled groundnuts, Canadian wonder beans, haricot beans, mixed beans, sugar beans, velvet beans, cowpeas, sunhemp, sunflower seed, sorghum, soya beans, and seed cotton. The prescribed areas were the Western and Central Provinces and the Southern Province districts of Livingstone, Kalomo, Choma, Gwembe, and Mazabuka. At the same time, maize, maize meal, shelled and unshelled groundnuts and seed cotton were declared the controlled products in the Eastern Province and in the North-Western Province, shelled and unshelled grounds were declared controlled products. In 1968 the list of controlled products and prescribed areas issued in the

previous year was repeated in its entirety.[25] The situation remained the same in 1969[26] except that the board was then appointed as the agent of the government in the marketing of fruit and vegetables.

The policy of having a government statutory body compete with private marketeers and co-operatives in the marketing of commodities is said to have evolved for the following reasons:[27]

i) to encourage production by offering a ready market, thus promoting increased agricultural production.
ii) to reduce retail prices by entering the retail market, competing with other retailers, thereby helping to lower the cost of living and,
iii) to control imports, thereby protecting producers at home.

The Minister set the prices by statutory order. These orders stated the prices to be paid to producers, with the price differing according to whether the product was tendered at a town or a rural depot. Where the product was delivered to a rural depot, the prescribed price was to be reduced by handling and transportation charges in the schedule. Further deductions were made in the event of the product being defective in part. The orders also enumerated the depots where products were to be tendered. Ocran's research reveals that the Marketing Division of the Ministry of Rural Development made periodical assessments of the need for additional buying depots, and once the final decision was made, the new depots would be included in the next statutory order.[28]

In general, Ocran states, the activities of the Board until 1967 were centred on the acceptance of certain controlled products and residual products, but much of its

operation concentrated on depots along the (old) line of rail.[29] In 1967 the Board took over 131 depots in the Southern, Central and Western Provinces, from the Agricultural Rural Marketing Board (discussed below).[30] The GMB steadily increased its responsibilities - developing a cotton ginnery in 1965, and becoming an importer and distributor of seed, fertilizer, fruits and vegetables in 1969. By August, 1969, however, problems had begun to emerge.[31] In some depots there were no empty bags in which to pack maize, no woolpacks and no cotton bell sacks, all of which components the board should have provided. Further, complaints began to be voiced that the board took too long to move the products from the depots to the silos, and in some cases, that farmers had not been paid for products delivered to the depots.

(b) The Agricultural Rural Marketing Board

The Agricultural Rural Marketing Board was established with the purpose of taking over the operations of the Agricultural Rural Marketing Service which had provided marketing services in areas not covered by the Grain Marketing Board.[32] The operation of the ARMB was made complex by the fact that they operated on behalf of separate African Farming Improvement Funds in the Central and Southern Provinces. The complexities in the accounting system led the government to establish the Board which would have nothing to do with the funds. The Board was established in 1964 with the purpose of providing marketing services to non-viable areas in liaison with the Department

of Marketing of the Ministry of Agriculture. The Ministry defined a non-viable area as "one which had an agricultural potential, but in which the value of surplus agricultural produce had not yet reached the level at which it could carry its full marketing costs without producer prices being depressed to a point which provided the farmers with an insufficient incentive to increase production".[33] Thus, ideally, the Board's operation was supposed to be temporary, pending the increase in the production of agricultural commodities to an extent where they would cover the full marketing cost.

The ARMB was established under the Agricultural Rural Marketing Board Ordinance[34] which came into effect on July 3, 1964. Like the GMB, the ARMB was under the direction of the Minister of Agriculture in the exercise of its powers and duties. The membership of the Board consisted of a chairman and at least three other members. The duties of the Board were broadly framed as consisting of promoting and fostering the development of agriculture in each and every area.[35] The Minister was empowered to declare any area an "Agricultural Marketing Board area" and upon such a declaration the Board acquired a monopoly over the marketing of certain products as well as the general responsibility for the development of marketing in the area.[36] The Board itself could undertake the marketing of cattle, agricultural and other produce, and the supply and distribution of agricultural requisites.[37] In May 1964, the Board declared its first set of prescribed or Agricultural Marketing Board areas.[38] These included Mazabuka District, the Central, Luapula, and North-Western Provinces, and, with the

exception of Mankoya District, the Western Province. Later in the year the Eastern Province was also declared.[39] During the year the Board marketed maize, groundnuts, tobacco, pineapples, sorghum, sunhemp, rupoko, velvet beans, sunflower seeds, cowpeas and mixed beans. With regard to tobacco, the Board's role was merely that of purchasing the crop and transporting it to warehouses near the old line of rail where sales were made by auction or private treaty under the general supervision of the Tobacco Board of Zambia.[40]

In 1965 the Southern Province districts of Choma, Kalomo, and Gwembe were added to the list of Board areas.[41] It is suggested that this was done because the Southern Province Co-operative Marketing Union was not interested in the marketing of cotton, the production of which the Ministry was trying to promote.[42] The following year, the whole of the Western Province, including the district of Mankoya (which had previously been excluded) was added to the list of prescribed areas.[43] In 1966, the activities of the Board were expanded to include the distribution of seeds, fertilizer and other agricultural requisites, even in regions where marketing co-operatives were operating allegedly because these co-operatives were inefficient.[44]

The added responsibilities of the ARMB, however, proved too much for it to handle on account of the lack of finance and trained staff. In 1967, therefore, the Minister directed that the GMB should take over the functions of the ARMB in the Southern, Central and Western Provinces, thus leaving the Eastern, Luapula and North-Western Provinces for the ARMB. The sombre picture, therefore, is that although

it was merely a temporary measure, it was not as successful as was earlier envisaged. As Ocran has, rightly, observed:

> "The failings of the ARMB were essentially those of an understaffed institution with too many jobs. It had a mixture of commercial and non-commercial activities (which were never conducive to efficiency in the strict sense), in a nationwide area covering a good many crops."[45]

The early years of independence, therefore, saw the emergence of a special marketing board to serve rural areas. Through it a wide range of agricultural crops were controlled while others were being promoted. In the course of time the responsibilities increased beyond the capacity of the board. The solution adopted by the government was to replace both the GMB and the ARMB with a new marketing body called the National Agricultural Marketing Board.

B. THE NATIONAL AGRICULTURAL MARKETING BOARD

The National Agricultural Marketing Board (hereafter referred to as NAMB), came into existence on the 1st of September, 1969. Under the previous arrangement resource allocation had been biased in favour of the GMB. Government thought that favourable terms of trade had to be shifted away from the line of rail farmers so that producers, as a whole, could receive the same favourable treatment wherever they happened to be.[46] Ocran aptly summarises the historical background to the establishment of the NAMB.

Apparently, after independence, there was official government concern over the effectiveness and the purposes of the two marketing boards. A decision was reached in favour of a single statutory marketing body to be responsible for the marketing of all products. A working party was appointed by the Minister of Agriculture to consider the matter. The Working Party consisted of officials from the Ministry of Agriculture, the Director of Co-operatives and one of his assistants, one representative of the Ministry of Finance and one representative of the Office of National Development and Planning, and the managers of both the GMB and the ARMB.

After receiving evidence from various interested parties, the Working Party submitted its report on February, 28th 1967. It was the opinion of the Working Party that "there should not be an all-embracing board, absorbing the existing Cold Storage Board and the Dairy Produce Board", but rather an agricultural marketing board that would handle all cereal and other food crops, including groundnuts, cotton and fruit.[47] It excluded eggs, poultry and vegetables from the Board's functions and suggested that co-operative marketing unions should be encouraged to operate alongside the marketing board.

1. Formal Statutory Structure

The formal structure of the Board is an important element in the determination of the relationship between the

Board and the government and, therefore, the decision-making process. Section 3 established the NAMB as a body corporate with perpetual succession, capable of suing and being sued. In the exercise of its powers and functions, however, the Board is subject to any written direction (both general and specific) of the Minister who appoints all the members of the Board.[48] The Board consists of nine members of whom at least three must be public officers.[49] In all the deliberations of the Board, however, a nominee of the Minister from the Ministry may attend and take part in the proceedings of the Board, but without the right to cast a vote. The tenure of membership is three years but, at the expiration thereof, a member is eligible for re-appointment. A person cannot be appointed as a member of the Board while he is an undischarged bankrupt or serving a sentence of imprisonment and one ceases to be a member on death, bankruptcy, absence from three consecutive meetings of the Board without its permission, resignation, conviction for an offence and sentence of imprisonment without the option of a fine, or if he becomes, in the opinion of the Minister, mentally or physically incapable of performing his duties as a member. The discretion vested in the Minister to remove a member by reason of mental and physical incapacity underlines the immense powers of the Minister with respect to the Board. In addition, the Minister is empowered to terminate the services of any member by giving one month's notice. Further, the Minister may perform all the functions of the Board in certain circumstances. Section 7(7) states:

> "Whenever, due to vacancies in membership of the Board there are less than five members of the Board, the Minister may perform all the functions of the Board until such time as, by

> appointment, sufficient vacancies have been filled to bring the number of members of the Board to more than four, and all such appointments to the Board necessary to bring its total membership to more than four shall, in such event, be made by the Minister within three months of the date of the vacancy last occurring before the Minister exercises his powers under this subsection."

These provisions ensure that the government, through the Minister, keeps a tight control over the Board and its activities and, consequently erodes any degree of autonomy that the Board may enjoy.

The Board may appoint from its own members an executive committee and delegate to such committee any of its powers it deems fit. With the consent of the Minister, the Board may appoint other committees to carry out general or specific functions as the Board may determine and the Board may, with the approval of the Minister, delegate to such committees such of its powers as it may deem fit.[50] While the membership of the executive committee is restricted to members of the Board, other committees may comprise members who are not in the Board. This explains the restriction to the effect that no person should be appointed to a committee if he would be disqualified from membership of the Board.[51]

2. Functions and Powers

The functions and powers of the Board indicate the extent to which the State exercises control over the marketing of agricultural commodities. Control is being exercised through the grant of monopoly powers of marketing

of certain agricultural commodities known as controlled products which are vested in the Board, and the licensing of middlemen who might wish to deal in those controlled products. But the Board's powers go beyond the marketing of controlled products only. Section 11 provides that the functions of the Board are to take possession of and dispose of any controlled product vested in it, to buy and dispose of any controlled product whether vested in it or not, to buy and dispose of any non-controlled product, to buy, sell and distribute agricultural requisites, to import or export any agricultural products and requisites, to provide storage and handling facilities for any agricultural product or requisite, and to do all things necessary and consistent with the provisions of the Act to ensure the orderly marketing of controlled products and the supply and distribution of agricultural requisites, within any prescribed area. A controlled product is statutorily defined as "any agricultural product, including cattle, livestock and poultry, or any product derived therefrom, declared by the Minister in terms of subsection (1) of section seventeen to be a controlled product".[52]

Under section 17, the Minister is empowered, by statutory order, to declare any agricultural product, a controlled product and prescribe the area within which the product is a controlled product. The Minister may declare different products to be controlled products in different areas. Having declared the products which are to be controlled products the Minister is obliged to fix, by statutory order, the prices payable by the Board for any controlled product. The prices of controlled products may

be varied according to the type of products, differing qualities of the same product, differing quantities delivered, the place at which the product is delivered, the date of delivery and the containers in which the product is delivered.[53] Unless the Board grants written permission, it is prohibited to remove any controlled product from any prescribed area.[54] Control would be ineffective if people could transport products from prescribed areas for sale, the difficulty, however, is the machinery for enforcement of this provision. Extra manpower is required to check every form of transportation to ensure that it does not contain a controlled product. At present the Board does not have the necessary manpower and while the Act gives senior police officers wide powers of search and seizure, it is not practicable for them to search every vehicle. Consequently, these powers have remained largely unused and there has been no prosecution for contravening the prohibition. While the prices of controlled products are fixed by the Minister, the Board is empowered to fix its own prices in respect of all uncontrolled products.[55] It is also required to operate an equalisation fund for every controlled product, uncontrolled product, and each agricultural requisite.[56]

The money which should go into the equalisation fund is the amount by which the proceeds from the sales of any product or requisite exceeds the costs incurred by the Board in selling the product or requisite.[57] In the event of the proceeds of sale being less than the costs of the Board in providing the marketing service, the difference must be met from the equalisation fund and if the money in the fund is not sufficient for this purpose, the government must make up

the difference.[58] The provision for equalisation funds give rise to two comments. The requirement that every product or agricultural requisite should have its own equalisation fund has never been complied with due to the plurality of products and requisites handled by the Board. The auditor's reports for the years 1976 to 1980 disclose that the books of accounts were not being maintained in accordance with the terms of sections 21(1), (2) and (3) (which require the maintenance of separate accounts and equalisation funds for products) because the Board, with the concurrence of the auditors, considered it impracticable to maintain such accounts and funds.[59] Second, an equalisation fund is practicable where the price leaves a margin for profit but not where as in the case of the NAMB, the government, through the Minister, decides the purchase price and the sale price and only reimburses the Board in respect of the cost incurred in providing the marketing service.

To enable the Board to carry out its functions effectively the schedule to the Act confers on the Board extensive powers. These powers extend from de-controlling any product vested in it to making rules relating to the terms and conditions relating to the delivery of products, to the borrowing of money, the investing of surplus funds and the entering into agreements or contracts with suppliers for the better execution of its functions. If at any time it appears to the Minister that the Board is in default in the performance of any duty or obligation of the Board under the Act, he may, by written notice, require the Board to make up for its default within a period of time fixed by him. For carrying out its functions the Board's source of

funds are parliament, monies that may accrue to it in pursuance of its activities and such other monies and assets as may be acquired by the Board in any other way.[60]

3. Registration of Dealers and Agents

As the Board enjoys monopoly powers regarding the marketing of certain agricultural produce and requisites the role of other entrepreneurs in respect of controlled products is restricted to that of dealers and agents only. Any person interested in dealing with any agricultural product or requisite, irrespective of whether such a person is an agent, producer, dealer, miller, or direct consumer is required before acting in any such capacity to register his name with the Board and disclose to it information relating to the product or requisite and the depot where he intends to deliver his products or requisites. The Board, however, has wide powers to reject any such application for registration, one of the grounds for such rejection being that the Board thinks that such registration will not be conducive to the orderly and efficient marketing of agricultural products. An exception to the requirement of registration is in respect of consumers of controlled products where such products are acquired solely for the consumption by the producer or members of his family.

4. Vesting and Surrender of Controlled Products

Section 29(1) of the Act vests three classes of controlled products in the Board. These are (a) any controlled product grown in a prescribed area by a producer as soon as it is harvested; (b) any controlled product which is acquired by an agent, miller or dealer; and (c) any controlled product imported into any prescribed area by any person as soon as it has been so imported. Any vested product becomes the property of the Board and must be surrendered to the Board in accordance with any directions which the Board may give as to time, place and the quantities. It is the duty of any one in possession of any controlled product to inform the Board as soon as the product is available for surrender. The Board is empowered to establish receiving depots at which controlled products may be surrendered and rural depots where persons who are not producers or agents can surrender their produce. Persons in possession of a controlled product must do so at the nearest depot, but where this is not possible he should notify the Board of the fact and, thereafter, comply with any directions the Board may give relating to the surrender of the controlled product.

Moreover, while the producer or dealer is under an obligation to surrender his produce to the Board, the Board has no obligation to accept the produce. The Board's acceptance depends on the produce complying with standards of quality, classification, grading and packaging stipulated in the Local Sales Rules[61] made by the Minister. If the Board accepts the produce, it must issue a receipt thereof

but, until it does so, it is under no obligation or liability in respect of the product.[62] If the Board does not accept the produce, it may reject it whereupon it ceases to vest in the Board and may be sold by the producer or dealer.

What emerges from these provisions is that producers are in a precarious position. As soon as the producer has harvested his crop, he cannot sell it to any body other than the NAMB, but the risk of its destruction remains with him until he gets his receipt. In the past the NAMB has not collected farmers' produce on time and farmers have suffered loss on this account. It appears to be unfair that the Board should have produce vested in it without carrying the risk of loss in the event of its destruction. The provisions relating to delivery and those relating to the passing of risk are consistent with a statutory body which occupies a residual position instead of a monopoly position. As a residual buyer the Board could impose its own terms of where it will collect the produce, at what price and the standard, in terms of quality, it will accept, because the farmer is free to dispose of his produce and only in the event of failure to sell may he be forced to comply with the Board's requirements. At present the Board is in a monopoly position, thus forcing farmers to deliver their produce to its depots only but running no risk of loss occurring between the harvest and the acceptance of the depots.

Section 29 which defines controlled products is so wide in scope that, by itself, it would force subsistence farmers to surrender their produce to the Board. Section 30 qualifies the scope of controlled products by providing

several exceptions. First, any controlled product sold for seed by the producer does not vest in the Board. Second, any controlled product may be retained by the producer if he requires it for consumption by himself, members of his family, his servants or his livestock. Third, a person may import any controlled product for his own consumption or that of his family so long as he does not sell the product or otherwise dispose of it to any person other than the Board. Further, the Board may, at any time, by statutory order, divest itself of any controlled product, or declare that any controlled product described in the order be sold by its producer to a direct consumer in the area where it is produced. Offences under the Act are punishable by a fine, a period of imprisonment or both.

Certain preliminary observations on these provisions can be made. It is clear that the NAMB plays a dual role. It has a monopoly over the marketing of controlled products and, at the same time, it has a residuary role over non-controlled products because they are not vested in it. With regard to controlled products, therefore, there is no competition with any other body or person in the prescribed areas. Consequently, private traders or entrepreneurs have no role in those areas, other than as agents of the Board. In terms of its financial resources, it depends on the producer price and the sale price, both of which are controlled by the State. In this type of relationship with the State it is not clear what goals the Board should pursue when the power of decision-making in such important areas as pricing and the determination of which produce should be controlled products lies elsewhere. Consequently, it is not

surprising that the Board has faced numerous problems in its operations.

5. Performance

The first board members comprised six non-government officials: Messrs J.E.M. Landless (Chairman), J.M. Banda, R.S. Banda, R. Chongo, G.C. Lialabi, and B.J. Tambuzi, and three government officials who were Permanent Secretaries of the Ministries of Rural Development, Trade and Industry, and Finance. The preponderance of non-official membership is obvious, but the degree to which the various categories of farmers was represented is not. Commercial farmers were represented in the person of Mr Landless, a commercial farmer himself.

On its establishment, the NAMB became responsible for virtually all farming requirements in both State Land and the Reserves and Trust Land. It monopolised the purchase, sale, importation, exportation and the storage of maize on a country-wide scale. It operated two cotton ginneries, one established by the GMB and based in Lusaka, and the other in Chipata (in the Eastern Province). It also monopolised the purchase of cotton as a continuation of the role of the GMB, except in the Eastern Province where the Eastern Province Co-operative Marketing Union marketed the crop. With regard to agricultural requisites, the NAMB became the monopoly distributor of fertilizer, thus replacing the private commercial entrepreneurs who had sold fertilizer in the

urban areas and the ARMB which had sold it in the rural areas.

In 1970, the Minister made his first statutory order under the National Agricultural Marketing Board Act in which he declared the controlled products. These products were maize, maize meal, shelled and unshelled groundnuts, Canadian wonder beans, haricot beans, mixed beans, sugar beans, velvet beans, cowpeas, sunhemp, sunflower seed, sorghum, soya beans and seed cotton.[63] The areas in which these products were controlled were the Copperbelt Province, the Central Province, and the districts of Kalomo, Choma, Gwembe and Mazabuka in the Southern Province. In the Eastern Province, only maize, maize meal, shelled and unshelled groundnuts and seed cotton were declared controlled products, while in the North-Western Province, the controlled products only consisted of shelled and unshelled groundnuts. In a subsequent statutory order,[64] however, the NAMB divested itself of two types of products - maize in the manufactured form, commonly known as flaked maize used for the manufacture of beer, and any controlled product acquired by the government for the purpose of scientific research.

In the same year the Board attempted to broaden its horizon by undertaking the marketing of fruit and vegetables. Since these were not controlled products, it could only do so as a residual buyer and importer.[65] The avowed justification for taking on fruit and vegetables was that this would provide an improved market for Zambian produce while, at the same time, meeting short-falls in imports from abroad.[66] As an importer of perishable products such

as vegetables, the Board was seriously handicapped by inadequate refrigeration facilities. This was particularly evident in 1970 when, due to the heavy rains, many farmers were forced out of production which, in turn, led to shortages. By the end of 1970, nearly a thousand tons each of onions and potatoes had to be destroyed due to the absence of specialised storage facilities, equipment and knowledge of the techniques required.[68]

The 1970 Producer Prices Order named a hundred depots located throughout the country, although fifty of them, situated in rural areas operated only seasonally. The depots established in Lusaka and Ndola were for perishable goods - fruit and vegetables. The Board's practice at the two depots was to receive the produce during the early hours of the morning so that the produce would still be fresh by the time it reached the retailers whose hours of business commenced at eight o'clock in the morning. Consequently, the period for receiving the produce at the depots was between 6-8 a.m., a factor which led to complaints by some farmers that only the big farmer with his own transport could deliver his produce on time.[69] The question of how many depots should be established is of great importance in two respects. In the first place the continued operation of a marketing body, as indeed any other business, depends on its financial viability. In the second place, if marketing services are to act as an incentive to rural farmers, access to these services, in the form of depots, must be made available as close to their villages as possible. There is, therefore, a conflict between the idea that every depot be economically viable and the idea that depots should be

established as close to the farmers as possible. The establishment of temporary sheds which are operational only during harvest and thus do not require permanent full-time staff is an attempt at a compromise. The Board's procedure in establishing depots was to submit its plans to the Ministry of Rural Development which would then determine the feasibility of the depot. The Board's initiative could, therefore, be threatened by the Ministry which had to provide the funds as was the case in 1970 when the Board's plans to establish four depots were turned down by the Ministry.[70]

From a meagre hundred depots in 1971, the NAMB had increased the number of depots by 1981 to one thousand. Out of these, however, only the initial one hundred could be said to have been viable; hence it is appropriate to describe the NAMB as providing a service rather than as operating a strictly business concern.[71] Despite this increase in the number of points at which produce could be collected, however, the actual proportion of produce handled by the NAMB did not change significantly. In fact with effect from 1978 onwards, the total share of maize handled by co-operative marketing unions was approximately fifty-four percent.[72] Of these unions, the Southern Province Co-operative Marketing Union (SPCMU) was the largest single purchaser, but this situation has been explained by the fact that SPCMU took over rural marketing functions in most parts of the Southern Province except Gwembe District, in 1977.[73] Since 1978, however, the contribution of co-operative unions towards handling remained steady at more than half, but with the restricted

role that the NAMB has had to play since 1980, the whole marketing process at rural and district level will rest with the unions, so that one can expect a gradual increase in the proportion of produce handled by co-operatives.

The contribution that the NAMB has made to the marketing of agricultural produce can best be appreciated when one examines the operational problems it has faced since it began its work in 1969. The NAMB's problems appear to have commenced at the very beginning. The problem of storage has already been mentioned. This problem has plagued the NAMB in each successive year. Plans have been made, however, to improve the position by establishing sixty-four all-weather steel storage sheds for maize and fertilizer. Twenty-five of these sheds are to be situated in the Southern Province, while the rest are to be distributed throughout all other provinces.[74] Of the twenty-five sheds meant for the Southern Province thirteen, maize and fertilizer sheds constructed with the help of the Canadian International Development Agency (CIDA) were officially handed over to the NAMB in May, 1983.[75]

A problem which might take time before a lasting solution can be found is that of transportation. The problem of transportation affects not only the movement of crops from rural depots to district depots where they can be stored, but also the distribution of inputs, particularly fertilizer. From the time of its creation, the NAMB has persistently been accused of failing to, or delaying the collection of produce from farmers.[76] On its part, the NAMB has attributed its transportation difficulties to poor feeder roads which they claim become impassable in the event

of heavy rains.[77] In some cases those products, which cannot be collected, go bad and have to be destroyed - except for maize which may be processed as stock feed. In October 1985, the Minister for Agriculture and Water Development is reported by the official government newspaper of having declared 6,867 bags of maize, which had been lying exposed to the rains for three years in the remote Luapula Province town of Isoka, unfit for human consumption.[78] In this particular instance, which in Zambia is by no means isolated, there appears to have been a critical shortage of vehicles. It has often been claimed that agricultural requisites such as fertilizer have not been delivered to the depots in some rural areas, or have been delivered too late. The problem of delivering fertilizer, as indeed other inputs which have to be imported, is compounded by shortage of finance and delays caused by congestion at ports utilised by the country for importation of goods, notably Dar-es-Salaam in neighbouring Tanzania.

Another problem has been the provision of grain bags which farmers are to use. On occasions, empty grain bags have either been in short supply or have arrived late. In 1976 the NAMB made a ruling that new bags must be paid for in cash.[79] In this way the Board would be in a position to import them from abroad.

Finally, the Board has always operated on a deficit which brings into question the pricing policy government has forced it to pursue. The 1976 Annual Report discloses that in all the depots there was an acute shortage of handling equipment as well as containers and other packaging materials due to lack of funds, and non-availability of some

of the equipment and raw materials. The same complaint of insufficiency of working capital was raised in 1977, when the cause of the problem was attributed to stockholding and "unrealistic budget allocations" from the government.[80] In addition, the Board was owed money by certain unnamed parastatal bodies against whom it could not take steps to recover for fear of the repercussions that might befall them.[81] The deficits between financial returns and the operating costs and depreciation have risen from K62,105,000 in 1977 to K109,633,000 in 1980. Since then, however, the government has reduced its subsidies on fertilizer and to some extent on maize, consequently the Board has had to increase prices in order to cover its costs and reduce reliance on government subsidy. The operating deficit for 1981 (which had to be met by government subsidy) was down to K68,072,000. Government has not been very keen in meeting these subsidies promptly, thus causing the Board to experience liquidity problems and, in most such cases, it is the farmer who is paid late for his produce. Although the Board has stated that farmers are paid within four to five weeks, this has not always been the case and there have been occasions when farmers have been told to wait indefinitely,[82] although the earlier practice of paying rural villagers by cheques has been discontinued.

The NAMB's problems were becoming apparent to the government and those it purported to serve shortly after it came into operation. In September 1971 the government commissioned the Ford Foundation to study the operations of the Board and make recommendations with respect to its financial, managerial practices, and organisational

arrangements.[83] The report submitted by Williams and Wardale began by considering the arguments in favour of a statutory board as opposed to a wholly government-owned and operated institution, or private enterprise. The report noted that the choice of statutory marketing boards was made on the basis of the following considerations:

a) Public ownership facilitates the achievement of the non-market welfare objectives of the government;
b) Unlike a government department, with its inflexibility and slow decision-making processes, a statutory board, enjoying a high degree of autonomy would be able to employ incentives and techniques similar to those which promote efficiency in the private sector.

Williams and Wardale suggested two ways by which a statutory board could achieve the efficiency of the private sector. First, something akin to a profit motive could be introduced by establishing specific goals and measures of performance. Second, there must be sufficient managerial freedom or autonomy of management to develop the initiative and entrepreneural skills needed to achieve the goals proposed. According to the two researchers, in the absence of the two features, it is unlikely that a statutory board would be successful.[84]

Williams and Wardale then proceeded to show how these features had not been provided in the policy of the Zambian government towards the NAMB. They felt that until the role of the Board vis a vis government was changed, the Board could not be expected to improve its performance. They pointed out that there was a lack of a clear formulation by the government of the NAMB's objectives as neither the Ministry of Agriculture nor the Board was quite sure what

the Board was supposed to be achieving. According to their report there was too much control by government over the Board: it was notified by ministerial directive which crops it was to handle and the areas in which it was to perform its marketing functions, as well as what the purchase and sale prices would be for each crop and agricultural input. As all its operations could be traced to direct ministerial instruction, the Board had a readily available scapegoat for its inefficiency and little incentive to try and emulate the private sector.

In addition, the report pointed out, because the prices set by the government had not been sufficient to cover its operational costs, the Board had become increasingly dependent on government subsidies. The Ministry of Agriculture granted these subsidies with growing reluctance, but took no steps to discover whether the subsidies were solely a result of government's uneconomic prices or could be the result of inefficiency. Williams and Wardale asserted that government had failed to provide an institutional framework within which the NAMB could function:

> "A well-defined set of goals, a matching set of operational criteria and a sufficient degree of managerial freedom are the three key factors with which the government must concern itself if any parastatal is to be successful. It is precisely the failure of the Government to deal adequately with these three matters in the past which has contributed significantly to the present unsatisfactory nature of NAMBOARD's operations. To regard the mere formation of a parastatal as itself some sort of panacea for the solution of a complicated social or economic problem is, unfortunately, demonstrable nonsense - the experience of NAMBOARD being itself a prime example of this."[85]

These criticisms are as valid now as they were in 1971. At a workshop on "Parastatals and Economic Development" held in Lusaka in May 1986, at which the NAMB was used as a case study, it was said that the Board had been adversely affected by lack of incentives for improved performance as well as lack of management autonomy and hence accountability.[86] In a paper presented by Promil Paul, a consultant for a leading firm of accountants and auditors, it was disclosed that the NAMB's poor performance could be attributed to government pricing of key products, which had the effect of preventing the Board from developing an economic pricing policy. The pricing system also had the effect of discouraging the private sector from participating in trading in the controlled products because of inadequate margin to cover the high transport and handling costs to remote areas. Further, Promil Paul stated, the NAMB's dual objective to meet the non-commercial provision of services to farmers and still maintain commercial or economic viability put a great strain on the Board's scarce resources. In his view, for the NAMB to perform effectively it must be restructured organisationally, financially and administratively with five objectives: i) to expand the role of markets, ii) to expose the Board to the stimulus of competition, iii) to clarify objectives and relations between the government and the Board, iv) to optimise managerial autonomy at all levels of the firm, and v) to improve the overall efficiency of the NAMB as an entity. Moreover, Dodge pointed out in 1977 that the NAMB's "inefficiency is due, in part, to the increasingly large number of functions it has been called upon to perform

without a comparable increase in skilled staff", and that government response has been the imposition of additional controls which have only served to cripple initiative on the part of the Board.[88]

The foregoing observations and suggestions for reform, if implemented, would have the effect of reducing the role of the NAMB from its monopoly position to that of residuary buyer. In the process of reducing its burdens, even the number of crops which it may market would be curtailed. All this would result in the State losing control over the marketing of agricultural produce, although through the pricing mechanism it would still be possible to encourage the production of certain crops as opposed to others. It is, nevertheless, important that the Board's functions should be reconsidered as mere re-organisation, while it may bring about efficiency, will not necessarily solve the problems resulting from the sheer enormity and complexity of the task that the Board is to perform. It is an over-simplification to attribute the NAMB's problems solely to inefficiency. The problems of the Board regarding the distribution of agricultural requisites have little to do with inefficiency. It is the Board's policy that all imports and local purchases of agricultural requisites must be ordered a year in advance. Before the Board determines how much, for instance, fertilizer is required, consultations are carried out by the National Fertilizer Committee which is composed of representatives of the Ministry of Agriculture and Water Development, the Commercial Farmers Bureau, the Bank of Zambia, Nitrogen Chemicals of Zambia, the Tobacco Board of Zambia, and the

NAMB's bankers. This committee considers the proposals put forward by the Board and the final figures are agreed upon. This process is supposed to take place in the month of April of each year, and the tendering and receiving of quotations is finalised in July. Suppliers are notified during the month of August after the Central Supply and Tender Board has made the award. In the absence of foreign exchange and transportation problems, the first consignment is expected to be at the ports by January the following year in readiness for the coming season which commences in March. However,

> "Due to problems of the non-availability of foreign exchange at the right time, transportation difficulties when fertilizer arrives at ports, and congestions, this programme has never been fulfilled."[89]

Both fertilizer imports and consumption have been increasing at a steady rate since 1970. Fertilizer purchases have risen from 11,925 metric tons in 1972 to 186,000 metric tons in 1981[90] and out of this, less than one-sixth is produced locally by Nitrogen Chemicals of Zambia. Being a land-locked country, Zambia has had to depend on the port facilities of its neighbouring countries for the importation of goods. Four ports have been most popular for fertilizer imports - Dar-es-Salaam in Tanzania, Beira and Nacala in Mozambique and East London in South Africa. When fertilizer arrives at ports, a distribution schedule is monitored to the NAMB's agent at any given port stating the depot/station, description and quantity to be dispatched directly.

The railways, both Zambia Railways and Tanzania-Zambia Railways (Tazara), have contributed to delays. Station to

station wagons expected to arrive within four days sometimes take much longer. Under these circumstances the NAMB has no option but to deploy road transport although this mode of transport is nearly five times more expensive than the railways.[91] On the same point, the then financial controller of the NAMB, G.O. Ezeokafor explained in 1978:

> "Internal transport has also presented its own problem. The budget is normally based on the rates charged by the Zambia Railways but in actual practice road transport is largely used owing to non-availability of enough rail wagons to transport maize, fertilizer, implements etc. Road Transport is more than three times as expensive as the railway."[92]

Distribution to rural provinces is done exclusively by road and at times by boats such as in the Western Province from Mongu to Kalabo. Due to poor infrastructure, Western, North-Western, Luapula, Northern and Eastern Provinces are usually served first from the previous year's carry over. However, the remaining provinces along the old line of rail have commercial farmers who usually plan and purchase stocks far ahead of the rainy season. In the event of delays in the arrival of new fertilizer, the limited stocks end up by being shared more or less equally by all provinces. There are cases where, even when fertilizer arrives at district centres, transport to take it to rural or sub-depots constitute a big bottle-neck. This is because most of the feeder roads are not properly maintained, and transporters are just too reluctant to risk their depleted fleets of vehicles for which spares are not easily available. Where fertilizer arrives late or coincides with the rainy season, the bad feeder roads become impassable, thus literally cutting off the rural and sub-depots from the main district

and provincial centres. Before we examine the steps government has taken in response to the various criticisms made against its handling of the Board, attention must be focussed on the pricing policy for controlled goods, a policy which has shared the blame for the poor performance of the Board.

6. Government Pricing Policy

(a) Early Government Pricing Policy

The pricing policy for agricultural produce has a great influence on the overall performance of the agricultural sector. Farmers, like other investors, always strive for reasonable returns on their investments. Consequently, they respond to changes in the prices of commodities in such a manner that the changes produce results most favourable to them. Through government manipulation of prices of various commodities it is possible to encourage increased production of the desired commodities. It is urged, however, that price determination must take into account the organisational and technical support that goes with agriculture.[93] In a paper prepared for the National Commission for Development Planning, Katilungu and Zeko have stated:

> "Any price policy aimed at developing agriculture, should take into account and, if necessary, influence, the following factors: the ratio of the general level of agricultural product prices to the level of agricultural input prices; and the ratio of the general

> level of non-agricultural input prices to the general level of non-agricultural prices."[94]

They state that while these price relationships are in theory distinct, any set of measures for price regulation will simultaneously affect all of them. If, for instance, the government succeeds in establishing price floors for two or three major crops, downward price fluctuation will be restricted and relative prices, the output-input price ratio, and the terms of trade of agriculture will all be altered to some extent. Price policies, therefore, must be based on a consideration of their effects on all the key price relationships. A stable price is one that ensures, or would ensure, that the producer receives a reasonable return on his investment. Such a stable price is of great importance in agriculture where resources cannot be shifted quickly and employed in different but more profitable areas. As there is usually a long period between investment and the actual realisation of the output, sudden price changes unfavourable to producers would have the effect of putting some of them out of production for a long time.

Further, they contend that changes in the relative prices of different agricultural commodities results in shifts in the allocation of inputs among the commodities involved. As "farmers respond to changes in prices by re-directing their efforts in accordance with profitability" the overall output of a given agricultural product "can be increased by transferring inputs from other competing crops".[95] This objective can be attained by manipulating prices of different commodities. They also place emphasis on the importance, in terms of achieving overall increase in

the production of a given product, of the price-ratio of outputs to inputs. In their view, price ratios more favourable to farmers can be brought about by lowering the prices of inputs to the farmer and by raising the prices of outputs.

On a broader plane, the price-ratio between the agricultural and non-agricultural commodities, they argue, determines the rural-urban income distribution. The general trend in an economy where a large segment of population is found in rural areas is that, literally, all the income is derived from the sale of agricultural produce. Higher prices paid for agricultural produce would, therefore, act as an incentive to farmers in rural areas to increase production while at the same time raising their incomes. Regrettably, non-agricultural products have always commanded higher prices in relation to prices of agricultural products, thus creating unfavourable terms of trade for rural farmers.

Writing in 1977, Dodge asserted that the framework of Zambia's crop pricing policy had changed little since the colonial period.[96] Nonetheless, it may be stated with ample justification that at present the principles regarding the determination of prices for commodities have remarkably changed. In her brief summary of the institutional set-up for price determination she explained that following independence the Agricultural Marketing Committee (AMC) was established in 1964 for the following functions:[97]

i) To advise on methods of price determination for agricultural commodities, what prices should be charged and what changes, if any, were advisable;
ii) To advise on the co-ordination of

producer prices of agricultural commodities;

iii) To advise on the extent and nature of price and marketing controls and the manner of their operation;

iv) To examine and report on the operation of the statutory marketing boards; and

v) To prepare an annual report and review of matters falling within the purview of the committee.

In its first report of 1965, the AMC presented a report on maize in which it advised that the country's objective must be national self-sufficiency in maize since imports were undesirable and exports could not be economically sound for geographical reasons. It established the target for maize production as annual consumption plus three to four months' consumption requirements as an insurance against a succeeding bad crop.

In formulating its principles for price determination, the AMC considered various options among them the cost-plus system whereby the price is related to the cost of production plus a profit margin, and the dual-price system by which price differentials are introduced depending on whether the product is to be sold locally or externally. The AMC rejected both. The former on the grounds of the difficulty of estimating the costs of production as well as the inability of the system to take into account the demand for the product. The latter, on the ground that it ignored the interests of the consumer and the effect of the pricing policy on the national economy, as the gap between the selling price to the local consumer and the average return to the producer might lead to black marketeering.

The AMC recommended a pricing policy "that would maintain a reasonable equilibrium between domestic demand

and supply by a process of limited price adjustments".[98] Such adjustments were not to exceed twenty-five ngwee for each successive year. Whether the price should rise or fall would depend on the extent to which deliveries to the statutory board exceeded or fell short of internal sales by the board. The following recommendations of the AMC were made to, and accepted by, the government:

i) That the Minister of Agriculture should announce each year, by the month of September, a pre-planting price for maize to be delivered to the statutory board in the twelve months from the following 1st May;
ii) The pre-planting price should, before the 1st of May each year, be subject to confirmation as a fixed price by the Minister of Agriculture, and if not so confirmed should be varied by the Minister but by no more than twenty-five ngwee;
iii) The pre-planting price announced in each year should not vary from one year to the next by more than twenty-five ngwee per standard bag;
iv) That all prices for maize should be per 200 lb and should exclude the cost of the bag.

Inspite of government acceptance of these principles they seem to have been more honoured in their breach than in their observance. Dodge provides numerous instances of this. In the 1964-65 crop year, deliveries to the Grain Marketing Board's depots exceeded internal sales by more than ten percent and the AMC recommended that the 1965/66 pre-planting price should be reduced by twenty-five ngwee. Government, however, while approving the need for reduction, reduced only by half of the recommended figure.

In 1967 the AMC observed that in the 1965/66 crop year, maize deliveries exceeded local sales by twenty-eight percent, a further reduction of twenty-five ngwee was

imminent. The AMC, supporting the decrease in the price, argued that commercial farmers had increased their maize acreage and the milling industry, which was subject to price control in maize meal, was burdened by increasing production costs. The reduced profitability might discourage further investment in the milling industry. Instead of passing on the cost of increased milling cost either to the consumer, in the form of prices for mealie meal, or the government in the form of subsidy, the producer price, which so far had had a detrimental effect on the production of other crops such as tobacco, cotton, and groundnuts, should be reduced by thirteen ngwee per bag. The AMC disapproved the reduction by a full twenty-five ngwee on account of the effect it might have on the emergent farmer. It observed that there was a conflict between economic and developmental objectives. Maize could be produced more efficiently by commercial farmers, thus, from an economic viewpoint, there was no place for the medium and small scale producer. But from the point of view of economic development in general, it was essential that farmers, medium and small scale, be encouraged to produce for sale. The AMC also recommended subsidies to assist African farmers to become more efficient. The government, however, reduced the price by twenty-two ngwee, at the same time reducing the selling price of the statutory board by thirty ngwee, a subsidy which benefitted the milling companies and the urban consumers. In the following year the producer price of maize was further reduced by twenty ngwee, inspite of a profitable export market.

In his analysis of producer price policy in the AMC's

annual report of 1968, the Director of the Department of Economics and Marketing in the Ministry of Agriculture, stated that there was some inconsistency in the producer prices for maize in the non-controlled areas. Little attention was paid to whether an area was in a surplus or deficit supply position. He suggested that the government's maize price policy should provide a basis for regional price determination. The use of the national criteria at the local level - a producer price which would guarantee self-sufficiency in production, allow for the replacement of reserve stocks, and take advantage of export markets for maize - would assure the determination of appropriate price levels throughout the different local areas of the country. Thus when considering regional pre-planting prices such factors as the size and location of the relevant local markets, amount of local production, landed cost of imports, local milling and marketing margins, costs of exporting the crop, and trends in local production should be taken into account.[99]

These recommendations were the precursor of producer price differentials in various areas. In 1968/69 the price of maize in outlying provinces with a deficit in maize production was considerably higher than the price in surplus areas. For example, in the 1968/69 crop year the price for maize delivered to the line of rail depots was K3.20 per bag, it wasonly K2.40 in the surplus area of Chipata in the Eastern Province. Similarly, in the deficit areas such as Kasama, in the Northern Province, Mansa in the Luapula Province, Kabompo in the North-Western Province and Mongu, in the Western Province the prices were above K3.70 per bag,

the differences in the prices even among deficit areas being a reflection of transport costs.

In the 1970/71 crop year, for the first time, government introduced a guaranteed floor price of K3.20 per bag of maize at all depots throughout the country. The floor price is said to have been introduced to ensure a fair compensation to all farmers, including those in remote areas.[100] According to Dodge, the effect of the floor price was to encourage maize production primarily in the Eastern Province (a surplus area) because the floor price was fifty ngwee above the previous year's price in most other areas. Price differentials were maintained depending on the depot to which the products were delivered but in 1975 all differentials totally ceased.[101] In a vivid assessment of the country-wide effect of the introduction of a uniform pricing policy, Dodge says:

> "The farmers who have gained from the uniform pricing policy - i.e. those who have received higher prices for maize relative to the line of rail main depot price in recent years than they received in 1969/70 - are the farmers in the line of rail provinces, the Eastern Province and - in 1973-76 only - the Samfya and Kawambwa districts of the Luapula Province and the Solwezi district of the North-western Province. The farmers who have been the losers under uniform pricing - i.e. those who have received lower prices relative to the line of rail main depot price than they received in 1969/70 - are the farmers in the Mansa district of the Luapula Province, the Kabompo and Zambezi districts of the North-Western Province. It would be very difficult (if not impossible) to find a justification on grounds of "equity" for this division between farmers who have gained and those who have lost."[102]

Thus, continues Dodge, uniform pricing has the effect of raising the incomes of rural farmers unevenly, the size of benefits it provides varying in direct relationship to the

remoteness of a farmer growing the product and the amount of the product he grows. More recently, Katilungu and Zeko have reported the preference of some traders for price differentiation, giving higher prices to specific regions in the country for those crops which are easier to produce. The argument is that concentration of production in such areas would help reduce marketing costs, in the end making it cheaper for consumers to buy the produce. But Katilungu and Zeko support uniform pricing on the ground that difficulties may arise in determining the basis of such a price policy, and that pursuing a differential pricing policy could lead to the creation of deficits in some areas as produce would tend to move to areas with high prices. They conclude, the "present situation of uniform prices has so far proved quite workable".[103]

(a) Current Pricing Policy

At present prices are determined on a cost-plus basis which is the total cost of production for the crop per unit plus some percentage of profit margin. Consequently, the cost of inputs are set by the government. To enable a farmer to obtain a fair price there have been subsidies to producers for inputs, to marketing agencies for handling transport and storage costs and to consumers in the price paid for the final produce. In the case of maize for instance, the price paid to the producer is higher than that at which the maize is sold to the milling companies. The difference in price is met through subsidies by the government.

In terms of the process by which the actual cost of production is assessed, the planning unit of the department is responsible for collecting data. The data is collected from two sources - one is from farms owned by parastatal organisations. Crop husbandry on such farms complies with standard practices recommended by research stations. The second source of data lies with farmers assisted by the Commercial Farmer's Bureau who report on anticipated costs of production for commercial farmers. The planning unit assesses all the data and thus arrives at the average cost of each category of farmers. This data is then presented at a meeting attended by the Permanent Secretary in the Ministry of Agriculture and Water Development and by representatives from various farming and marketing organisations, at which a profit margin expressed as a percentage of the average cost of production is decided. The price is then recommended to the Cabinet on whose approval it is gazetted as the official price. In so far as the cost of production is taken into account, this represents a remarkable change in pricing policy from that which was applicable during the period that Dodge covers.

There is, admittedly, some difficulty in applying the cost-plus method of pricing. The cost of production must necessarily be different from place to place since the question of how much fertilizer, for instance, is required to produce a given yield depends on soil and climate which are, themselves, variables. Consequently, the data that relate to the cost of production must be considered to relate to average conditions and practices for different management levels. Thus, given fixed and variable costs,

profits would only accrue to the extent above which these costs can be covered through sales of farm output. As Katilungu and Zeko explain:

> "Every farmer's average cost of production differs with the number of bags he produces. Given fixed costs between two farmers, one who produces more would cover the costs quicker. It follows, therefore, that any given price for the crop will only enable some farmers to cover their costs and yet others to even make a profit. An increase in the price of the crop does not automatically result in all farmers making a profit. Notwithstanding these factors, pricing is still an important tool for increasing production of crops."[104]

They also point out that omitted under the present mode of calculating the cost of production for the emergent farmer is the cost of transportation. As marketing agencies' transport charges for collection of produce from depots amount to fifty ngwee per bag, this constitutes a cost on the farmer's part which reduces his profit margin. They recommend, so far as maize pricing is concerned, that any price policy should take into account not only the interest of commercial farmers as is the case at present, but also of emergent farmers. They added that such prices should reflect not only the cost of production but also the general trend in prices of both other agricultural products as well as non-agricultural goods. In their conclusion, they warn against continually increasing prices of agricultural crops in proportion to increases in cost, as this may adversely affect consumers. Rather, they urge, government should recognise the importance of non-price mechanisms for increasing food production such as better extension services to improve the management skills of farmers, and the improvement of marketing facilities.[105]

The argument that consumers may suffer if the government increases the price to correspond with any increase in the cost of inputs has been at the centre of government policy since independence. There is no doubt that there have been some significant increases in the price of agricultural commodities because during the period 1971 to 1980 the cost of a bag of maize rose by more than fifty-eight percent, while groundnuts went up by a hundred and eighty percent. It is nevertheless the case that prices of consumer items such as detergents, bread, blankets went up by even a wider margin than the price of maize (which is more widely grown than sunflower). Washing powder went up by ninety-four percent, bread by one hundred and five percent as did blankets. These disparities in price increases creates an unfavourable balance of trade for the rural farmers who depend on maize, and also makes the urban income more appealing than the rural. More important, however, from the point of view of marketing bodies such as the NAMB, the difference between the amount it pays the farmers and its selling price is not adequate to cover its cost for carrying on the service. Consequently, it has to rely on government subsidy to keep it afloat.

7. Summary and Prospects

The picture that emerges is that after independence, the State evolved an ambitious programme through the statutory marketing body, the NAMB, to control the

production and the marketing of agricultural commodities. The means by which the State sought to exercise this control, however, clipped the wings of the statutory board, thus, in part, ensuring its failure. The various criticisms which have been levelled at the government, have not gone unheeded. The government's excessive control, by requiring that a broad range of agricultural commodities be handled only by the NAMB, led to inefficiency and gross waste. Attempts at de-control have been two-pronged. One method has been to reduce the number of controlled products thereby reducing the NAMB's burden and affording some degree of participation by private enterprise in the marketing of agricultural produce. The other method has been to encourage the development of marketing co-operatives at provincial level so that these co-operatives can provide the primary service at local level. These efforts have been supplemented by, in the case of cotton, the establishment of a specialised limited company, the Lint Company of Zambia (or LINTCO) to promote, process, and market lint cotton.

The first method, that is, reduction in the number of controlled products, began in 1973 when the Minister ordered that "excepting maize, cotton and groundnuts in the Eastern Province and maize and cotton in other parts of Zambia, no controlled product shall vest in or become the property" of the NAMB in terms of section 29 of the Act.[106] This order became effective from the 5th of March 1973. The order did not prohibit the Board from handling crops which were no longer controlled, but the Board was no longer compelled to market the de-controlled commodities. It afforded the opportunity to the Board to concentrate on the few crops

that remained controlled. The Board's other functions, such as the importation and distribution of farm inputs, however, remained its sole responsibility. The establishment of LINTCO and the Horticultural Products of Zambia (ZAMHORT) to handle fruit and vegetables, both government-controlled companies, mean that the NAMB may neither market cotton nor fruit and vegetables, although cotton still appears on the list of controlled products. The extent to which efforts to de-control have benefitted the Board is impossible to tell, but the Board's financial outlook appears to be still unfavourable, because, it is submitted, as long as the State controls the prices of controlled products and other agricultural products, there is little room for the Board to make a reasonable profit since, as the Board argues, the basis on which prices are determined by government are erroneous. The establishment of provincial marketing co-operatives and their performance is discussed below, but attention needs also to be focussed on a different method of State control (illustrated by statutory board for tobacco), the Tobacco Board of Zambia.

C. THE TOBACCO BOARD OF ZAMBIA

The Tobacco Board of Zambia, (hereinafter referred to as the TBZ), offers an example of the use of a statutory board, not as a monopoly marketing body, like the NAMB, but

as a body responsible for the promotion of the production and marketing of a given agricultural product, in this instance, tobacco.[107] The Tobacco Board of Zambia was established in 1967 under the Tobacco Act[108] and became operational on the 1st of April, 1968.

1. Constitution and Functions of the TBZ

The TBZ is a body corporate consisting of the chairman, one member representing the growers of virginia flue-cured tobacco, one member representing growers of burley tobacco and not more than three members representing buyers of tobacco.[109] All the members are appointed by the Minister who is empowered to appoint such additional members as he feels necessary. The tenure of office of members is two years but they are eligible for re-appointment for subsequent terms. Whenever representation on the Board of any two or more of the categories of membership (the two types of growers and the buyers) becomes vacant, the Minister may perform all of the functions and duties of the Board until such time as, by appointment, such categories are duly represented. The Minister, must, however, make the necessary appointments within three months of the date of the vacancy last occurring. But for this limitation, the Minister would perform the functions of the Board indefinitely. Nevertheless, the Minister's power to terminate the services of the members by a month's notice ensures that he remains in control of the Board.

The functions of the Board are wide-ranging and involve the promotion, protection, and the maintenance of the production, sale, preparation for subsequent use and the export of tobacco. The Board has, in addition, a specific duty "to control and regulate the production, marketing and export of tobacco".[110] It is through the control and regulatory power of the Board that the State has sought to control the production and the marketing of tobacco. Through the presentation before the National Assembly of the Board's annual reports by the Minister parliament is afforded the opportunity to scrutinise the activities of the Board.

2. Control and Regulatory Power of the Board

The Board controls the tobacco industry in two ways - the registration of tobacco growers, and the licensing of dealers in tobacco, in particular, graders, buyers and auctioneers.

(a) Registration of Growers

The secretary to the Board is the Registrar under the Act. Any grower or person who bona fide intends to grow tobacco must be registered as a grower of the particular class or classes of tobacco which he intends to grow. Growers who are being assisted by government or a government agency (the Board, the Bank of Zambia, or any statutory body

whose objects include the giving of financial aid by way of grant or loan to farmers) may be represented by a nominee of the Permanent Secretary and such a person is deemed to be the grower of all the tobacco produced by all the assisted farmers. One circumstance in which the grower need not register is where he is a tenant producer of tobacco grown on a licensed buyer's land under the terms of the contract whereby the producer agrees to plant tobacco on no more than ten acres of the land and also agrees either to share the crop with the licensed buyer or pay him a stated share of the proceeds in consideration for his use of the land. In this case, the licensed buyer is deemed to be the grower and it is he who is required to register. The other is where tobacco is grown by a farmer who is a member of a co-operative society whose objects include the marketing of tobacco grown by its members and the farmer is required, under the contract with the society, that his tobacco should be marketed exclusively by the society. In this case the society is deemed to be the producer and must register.[111] On completion of registration, for each successive season, the Registrar will allot one registration number to each registered grower for each class of tobacco to be grown by the farmer in that season.

The application for registration contains a clause which becomes effective on registration which empowers the Board, as agent of the registered grower, to dispose of or destroy or cause the same to be destroyed or disposed of, any surplus or unsold tobacco belonging to the registered grower and remaining in his possession or under his control at the end of any selling season. The Board may, however,

by written permission, allow the registered grower to retain surplus tobacco which has not been sold at the end of the selling season until the next selling season.

The registration of a grower may be cancelled if a grower is convicted of an offence under the Act or has given the Board false information or fails to comply with any condition or duty imposed by the Act. The grower may appeal to the Minister but "no appeal shall lie to any court from the decision of the Minister".[112]

(b) Licensing of Graders

It is an offence to carry on the business of grading tobacco without a licence from the Board. So an application for a grader's licence must be submitted, but the Board has a discretion to refuse any such application. It may refuse "if in its opinion" the applicant is not a "proper" person to hold such a licence, or the applicant is unable or unwilling to comply with any regulations as regards premises to be used for grading or any other relevant regulations under the Act or any other written law.[113] An aggrieved applicant has a right of appeal to the Minister. The Board may cancel or suspend any grader's licence issued under the Act if the grader has been convicted of an offence or the Board is satisfied that the grader has given false information to the Board or registered grower, or failed to comply with any condition or to perform any duty imposed on him by the Act. A grader who continues to carry on business after his licence has been cancelled or suspended is guilty of an offence. But he may appeal against the cancellation

or suspension of his licence to the Minister, whose decision on the matter cannot be appealed against.

(c) Licensing of Buyers

Section 41 makes it an offence for any person, other than the Board or an agent to buy tobacco, unless he is licensed in accordance with the provisions of the Act. An application for a buyer's licence must be submitted to the Board by the person who intends to be a tobacco buyer. In such an application the intending buyer may nominate an employee or an agent who, on his being licensed, is entitled to buy tobacco for, and on behalf of the licensed buyer under his licence. The Board is empowered, with the approval of the Minister, by rule, to prescribe grounds upon which it may refuse to issue a buyer's licence, and attach to any such licence any conditions which it deems reasonable in the circumstances. Notwithstanding the grounds for refusal which the Board may prescribe, it must refuse to issue a licence if it is not satisfied with the financial standing of the applicant.[114] In addition to the general buyer's licence, the Board may issue an "exclusive" licence, that is, one which gives the buyer the right to buy a particular class of tobacco to the exclusion of all other buyers. Any such exclusive licence may be confined by its terms to a specific area specified in the licence. The buyer's licence must contain particulars relating to the class or classes of tobacco which the buyer is licensed to buy, the area or areas (defined by the Permanent Secretary) in which the buyer is licensed to make his purchases, any

condition attaching to the said licence, and any other particulars which may be prescribed.

An applicant whose application for a buyer's licence has been refused or is dissatisfied with the condition or conditions attached to his licence may appeal to the Minister whose decision on the matter is not subject to judicial review.

The Board may cancel or suspend the operation of the licence for the same reasons as those applying to a grader's licence. The buyer has the same right of appeal in such circumstances as those relating to the grader.

(d) Licensing of Auction Floors

A person who intends to use any premises as an auction floor for the sale of tobacco must make an application in the prescribed form to the Board for a licence to convert the premises into a licensed auction floor. An owner or occupier of any premises for the sale of auctionable tobacco[115] without a valid licence is guilty of an offence. The Board's own premises when used as an auction floor is exempt from the requirement of an auction floor licence. Again, as with previous applications, the Board has a discretion in approving or refusing the application for the same reasons as for refusing the 'traders' and buyers' licences. Similarly, an appeal may lie to the Minister against the decision of the Board but no further.

3. Sale of Tobacco

The Act provides for two methods by which tobacco may be sold - by auction or by private treaty. For this reason, tobacco is divided into two categories - auctionable and non-auctionable tobacco. It is an offence for any person to sell auctionable tobacco otherwise than by auction. This prohibition does not, however, apply to the re-purchase or re-sale of auctionable tobacco which has already been purchased or sold on the auction floor, the sale of auctionable tobacco by the Board, purchase or sale of a trade sample or for use in research, or the sale or purchase of auctionable tobacco at primary or rural level to a licensed buyer authorised to do so. With regard to non-auctionable tobacco, the position is the reverse. It is an offence to sell non-auctionable tobacco by auction, unless it is part of a consignment for export.

State control extends also to the importation and exportation of auctionable tobacco. The Minister is empowered to grant import and export permits to licensed auctioneers to import tobacco and registered growers to export the same. The licensed auctioneer who has secured a permit to import tobacco is required to sell it in lots separate and apart from the locally produced tobacco, and disclose the name of the country from which the tobacco was imported. With respect to locally produced tobacco, whenever the Minister is of the opinion that the quantity of a particular class or grade which is being produced for sale will exceed the requirements of both the internal and external markets, he may, after consulting the Board,

prescribe the amount that will be sold within the country or exported, or prescribe the manner in which the Board should determine how much of the tobacco should be exported. The Board may, with the approval of the Minister, establish centres where surplus tobacco may be sent by growers and the Board may determine the manner by which tobacco in such pools will be disposed of.

4. Pricing of Tobacco

The Act empowers the Minister, after consultation with the Board, by Gazette notice, to set the minimum prices at which auctionable tobacco may be sold for internal and external markets.[116] This aspect distinguishes the TBZ from the NAMB because in the case of the NAMB, the products it handles have fixed prices from which it cannot depart. Where minimum prices are fixed, the Board is at liberty to receive a better price on the auction floor. Such minimum prices vary in respect of different markets and different classes and grades. The price fixed by the Minister is valid for one season only and during that season the Minister cannot vary it. If the Minister fails to fix a minimum price, the minimum price during that season is fixed at one ngwee per pound weight. Licensed buyers are duty bound to purchase auctionable tobacco only at or above the appropriate minimum price already fixed.

In order to protect the interests of the local growers, if any person buys auctionable tobacco for the purposes of

any external market at a price less than the internal market minimum price fixed for such tobacco, he is precluded from re-selling the tobacco within the country. But in certain circumstances, the Minister may on the recommendation of the Board, and under such conditions as he may think fit, issue a permit authorising the re-sale of the tobacco within the country at less than the appropriate internal market minimum price. The circumstances are where the Minister is satisfied that auctionable tobacco will be manufactured within the country and exported for sale outside the country.

Although the TBZ, unlike the NAMB, is not and was never intended to be a monopoly purchaser of the crop, it is, nevertheless, affected by the price of the product for which it is a marketing agency. The resources available to it might decrease due to a decrease in the production of tobacco and thus the levy it receives from growers. The Tobacco Levy Act[117] which came into operation on the 26th of April 1968,[118] empowers the Minister to prescribe the class or grade of tobacco which should be subject to the levy. Accordingly, the Tobacco Levy Regulations made by the Minister in 1968, prescribed the classes of tobacco that are subject to the levy and these classes are the same as those which have been prescribed as auctionable under the Tobacco Act. The monies obtained from the levy of various classes of tobacco is used for the purposes of assisting the Board in the discharge of its functions, and in the promotion of the tobacco industry generally.[119]

The price policy for tobacco was, originally, influenced by its leading role as the main foreign exchange

earning crop, average consumption amounting only to thirty percent of total production. The rest of the crop had to be sold to international buyers but the number of such buyers who could be attracted to the Lusaka auction floors depended on, not only the quality, but also the quantity of the tobacco which was available for sale. Consequently, the price policy aimed at raising the prices of those grades which were in high demand on the world market, thereby encouraging increased production of such grades. From 1966 to the 1969/70 season, the producer price for tobacco was the auction price set at the auction floor in Lusaka, less charges for transportation, handling, commissions and the tobacco levy due to TBZ. In the 1969/70 season, the average auction price was 62.61 ngwee per kilogram.[120] In an attempt to reverse the downward trend, the government introduced a floor price of 80.2 ngwee per kilogram - providing a subsidy amounting to 17.6 ngwee per kilogram. For 1972/73, 1973/4 and 1974/5 seasons the floor price remained 90.4 ngwee, but in the 1974/75 season, no subsidy was required because the floor price was below the auction price of 94.45 ngwee per kilogram.[121] Generally the price which was paid for tobacco on the local market was higher than the world market price but due to the high local cost of production, these prices had to be maintained to keep farmers in production. Payment of high local prices in a situation of low world market prices meant that the crop had to be exported at a loss and solely for purposes of earning some foreign exchange. The subsidy was more crucial to assisted tenant farmers who had to cover all the costs of numerous supporting services concerning credit, input supply

and extension, besides their actual production in the field. In the long run, however, the rate of increase in the price has not been matched by the rate of increase in cost and this has led to farmers shifting away from tobacco production to maize production. Thus production today only serves the local market, with nothing left for export.

Further, while growers of auctionable tobacco (Virginia tobacco) have had a guaranteed price, growers of non-auctionable tobacco (such as barley and Turkish tobacco) by far the majority of whom are small scale farmers, have not enjoyed any guaranteed price and this has done little to encourage small scale farmers who are already confused by the numerous grades of tobacco on which the price depends.[122]

5. Performance of the TBZ

The Tobacco Act came into force on the 1st of April 1968.[123] In the same year the Minister made rules relating to marketing and licensing[124] and regulations covering prescribed classes which denoted which classes should be auctionable and which should not. The schedule to the Tobacco (Prescribed Classes) Regulations[125] indicated that virginia flue-cured tobacco was the only class which was and remains auctionable. Burley tobacco, fire-cured tobacco, air-cured tobacco, and sun- and air-cured tobacco, are not auctionable and are, therefore, sold by private treaty.

At the same time, under the Tobacco (Prescribed

Varieties) Regulations,[126] the Minister prescribed what varieties of the prescribed classes were permitted to be grown in the country.

The prospects of the TBZ have largely depended on the place of tobacco in the agricultural sector. At the time of independence tobacco competed with maize as Zambia's major agricultural commodity.[127] Virginia flue-cured tobacco has been the most lucrative and commercially produced kind of tobacco, while barley and Turkish were and still are largely produced by small scale farmers. Since independence, however, production of all types of tobacco has gradually declined.

From the date of independence up to the end of 1969 the government had spent five million kwacha creating a marketing infrastructure to encourage tobacco production. This infrastructure included an auction floor in Lusaka with a capacity to handle eighty million pounds of tobacco per annum, a warehouse, and storage facilities. This expenditure did not, however, result in the expected increase in production as the year's crop dropped to eleven million pounds.[128] The decline was attributed, largely, to the departure of expatriate commercial farmers.[129] The downward trend continued in the following year as production dropped again to ten and a half million pounds.[130] The drop in production affected both virginia tobacco and Turkish tobacco. There was, however, a slight increase in barley tobacco and it was hoped that the tenant farming schemes introduced by the government would lead to an increase in the production of both virginia and barley tobacco.

Since 1971, however, the production of virginia tobacco

has steadily increased except during some odd seasons such as the 1980/81 and the 1981/82 when there were decreases in production. In these seasons the cause for the fall in production was officially said to have been "unsatisfactory weather conditions".[131] Otherwise an increase in production was recorded in 1983 to the extent of 22.5% over the previous year, although it was still the case that total production was still below that achieved in the 1980/81 season.[132] In the following year there was a 12% increase in production over the previous year, but again it was still less than the peak production of 1980/81. Consequently, it is now openly admitted that the importance of tobacco as a foreign exchange earner has dwindled.[133] Tobacco is no longer exported but consumed locally and the revamping of the tobacco industry, says the National Commission for Development Planning, will require a considerable injection in terms of credit and extension services.[134]

The decrease in the volume of production of both virginia and barley tobacco has had an adverse effect on the financial position of the Tobacco Board of Zambia. As Dodge has explained:

> "Both the auction floor and packing plant have a break-even point of 12,700 metric tons per annum. In 1973, total production was roughly 6,700 tons, of which 471 tons was burley. Since burley tobacco is not auctioned, the auction floor was operating at less than one-half the break-even level in 1973, while the packing plant was operating at only slightly above 50 percent of the break-even level. Thus large government subsidies have been required to cover the costs of operation. In 1975 and 1976 TBZ requested K1 million for this purpose."[135]

Even though there has been an increase in the production of tobacco reaching its peak in 1980/81, the present production

is still less than what is required for the Tobacco Board of Zambia to make a significant profit.

It is not only the decrease in production of tobacco which has caused problems for the Tobacco Board of Zambia, the extent of its activities has also contributed to its financial problems. Prior to 1982 the TBZ carried out and supported farmers through various schemes, in which extension was an important component.[135] These schemes were namely - Tenant Farming Schemes, Assisted Tenant Schemes, and Family Farming Schemes.

(a) Tenant Farming Schemes: The TBZ used to let farms of proven tobacco value with a minimum of five hundred acres of arable land to tenants with an option to renew their tenancies. Tenants were required to use not less than forty and not more than eighty acres for tobacco. The Board provided tenants with capital for farm improvement and guarantees for loans, in addition to its administrative and supervisory duties.

(b) Assisted Tenant Schemes: The TBZ operated these schemes for people who had proved successful in its training centres where, for a period of three years, they were trained in the production of tobacco. These farmers were allocated farms, thirty to forty acres of which were to be used for tobacco, while sixty to eighty acres were to be used for maize. Assisted Tenant Farming Schemes were under the direct management of the Board and the costs of all the

supporting services, known as scheme costs, had to be recovered from tobacco sales. The TBZ provided various services including capital for improvement, loan guarantees, and managerial assistance which included extension advice, accounting services, and machinery maintenance services.

(c) Family Farming Schemes: Unlike Assisted Tenant Farming Schemes, these farms were smaller - one acre for tobacco and two acres for maize. The TBZ provided managerial assistance.

The participants in these schemes were subsidised by government, although the degree of subsidisation varied greatly from one scheme to another. Dodge found that the schemes suffered from low yields and that owing to a lack of expertise and inadequate scheme management, participants put little acreage into tobacco.[137] Reluctance to grow tobacco seems also to have resulted from low economic returns by comparison to maize. In 1982, the TBZ began the process of re-organisation. The effect of this re-organisation is that its functions have, in practice, been reduced to those of a marketing agency in the strict sense. It has been shown of its extension and managerial services which have been transferred to the Department of Agriculture in the Ministry of Agriculture and Water Development which has absorbed all the extension officers of the TBZ. Consequently, it is in the process of selling its farms which it had let to farmers under the various schemes, to the farmers themselves.[138] This is yet again an indication of the limited scope within which State control is exercisable by government through

statutory boards.

D. MARKETING CO-OPERATIVES

1. Legislative Provisions

The Co-operative Societies Act contains provisions which apply specifically to marketing co-operatives. Under section 25 a society may be registered primarily to undertake and carry out any kind of business connected with the "marketing, collecting, receiving, taking delivery of, buying, handling ... of any agricultural product produced or delivered to it by its members or non-member patrons ...". Section 26 also permits the registration of a society whose business is the purchasing and distribution of agricultural requisites and household necessities for sale at retail to its members or non-member patrons. There is also a proviso, however, permitting co-operative unions and federations to sell such agricultural requisites, consumer goods and household necessities at wholesale prices to their member societies. Presumably a co-operative union may not sell wholesale to non-members even if they are patrons. A society marketing agricultural products, handling agricultural requisites or providing farming services to its members may be appointed as an agent of any statutory marketing board or other authority established by statute

for the purpose of marketing agricultural products or distributing agricultural requisites.[139]

A society formed for the purpose of marketing agricultural products may, with the approval of the Registrar, execute marketing contracts with its members, requiring them to sell their produce or part thereof, for a given period of time exclusively to the society or its agents.[140] Such a contract may provide that the society may resell the products delivered to it with or without the necessity of title to such products being vested in the society.[141] After re-sale the society must pay to the producers the price after deducting the commission due to it. The contract may also specify the sums which must be paid as liquidated damages for failure to deliver or the withholding of the required amount of produce.[142] In terms of procedure, except where general approval has been given by the Registrar in respect of a particular form of contract, every society which wishes to enter into any marketing contract, must, before execution of such contract forward two copies of the same to the Registrar who should indicate his approval or otherwise as the case may be.[143] A marketing contract entered into between the society and its members cannot be contested in court on the ground that it constitutes a contract in restraint of trade.[144] Section 32 was apparently intended to enable the society to rely, at least, on the produce of its members to conduct its marketing business. It may appear inconceivable that members of a marketing society should choose to sell their produce elsewhere, instead of backing their own society, but this possibility has always existed. Roberts and Elliott

have recorded an instance in 1968 when farmers in the Eastern Province refused to sell their maize to the Eastern Province Co-operative Marketing Association because the charges it made left the farmers with too small a profit margin.[145] In the event of competition between or among marketing agencies, farmers might find it beneficial to take their produce to the most efficient body. The detrimental consequence of this practice is that it will undermine the business of their society, leading to fewer options to farmers. In order to strike a fair balance between the interests of the society and those of its members, the circumstances relating to each marketing society intent on executing marketing contracts must be examined by the Registrar before he gives his approval to such contracts. The capacity of the society to handle the whole of the produce of its members effectively must be a very important consideration.

2. Trends in Favour of Co-operative Marketing Policy

Co-operatives have enjoyed government support since independence, but government efforts prior to 1980 were concentrated on producer co-operatives rather than marketing co-operatives. In 1980, government embarked on the establishment of marketing co-operatives in all provinces. The NAMB's operations in the rural areas were to be gradually curtailed and co-operative marketing unions encouraged to take over from the Board.[146] The Board's

operations are to be confined to the provincial capitals. While co-operative marketing unions provide primary marketing, the Board will provide secondary marketing facilities - storage, importation and exportation and the distribution of agricultural requisites to co-operative marketing unions.[147] In addition to the four unions in operation before 1980, namely, the Southern Province Co-operative Marketing Union (SPCMU), the Eastern Co-operative Union (ECU), the Northern Co-operative Union (NCU), and the Luapula Co-operative Union (LCU), in the order of their importance, five other co-operative unions were organised to operate on provincial basis. Those registered in 1980 were the Copperbelt Co-operative union, the Central Province Co-operative Union, the Western Province Co-operative Union, the Lusaka Province Co-operative Union, and the North-Western Co-operative Union.[148] Although the new unions were expected to be fully operational by 1982, at the end of 1981 only the Copperbelt Co-operative Union did any business. Through the Kaoma East Multi-Purpose Co-operative Society, as agent, the co-operative purchased maize, sunflower seed, groundnuts and paddy rice on a small scale.[149]

One of the basic problems the government has faced is the nature of the relationship between the co-operatives and the NAMB. The guidelines issued by the Ministry of Co-operatives on the 7th of March 1985 regarding the nature of this relationship and the roles of both the co-operatives and the NAMB are as follows:

> i) All existing co-operatives are to continue in operation; ii) the NAMB will continue to operate only in those areas where co-operatives have not yet assumed full

> responsibility; iii) provincial co-operative unions will have to raise their own overdrafts for crop purchasing; iv) provincial co-operative unions will be responsible for the purchasing of maize directly from the farmers; v) on delivery by the co-operative unions to district depots, all maize delivered will become the property of the NAMB; vi) the NAMB will pay the co-operative unions for maize delivered to its district depots on the basis of the total of the current producer prices and commission for handling and transport costs; vii) in deficit provinces, it will be the responsibility of the NAMB to move maize to those areas; viii) the NAMB will charge the co-operative unions the producer price for maize delivered to the district depots; ix) the NAMB will charge the government the transport and handling costs when maize is moved to deficit districts; x) all restitutions will be separately claimed from the government by the co-operatives and the NAMB; xi) the NAMB will have the responsibility of distributing fertilizer to co-operative unions; xii) the provincial co-operative unions will sell the fertilizer on behalf of the NAMB as agents only, but will be permitted to charge the Board the appropriate commission; and xiii) the NAMB will have no claim against the Agricultural Finance Company for fertilizer sold on local purchase orders (LPOs) to farmers by the co-operative unions.

These guidelines which have been the subject of discussion between the Director of Co-operatives in the Department of Co-operatives and the representatives of the co-operative unions do not appear to be exhaustive. It is not clear, for instance, whether the long-established co-operatives will be treated along the same lines or not, and even more important, in relation to the economic viability of co-operatives, the basis upon which commission will be determined. It appears that the initial idea was to abolish the NAMB altogether, but certain obstacles prevented this.[150] One of the problems was the need to establish new co-operative unions in provinces where none existed. The NAMB's operations would have to continue while the new

unions were being organised and the old strengthened. Another problem was the large number of the Board's employees who would have to be laid off.[151] At the time of field work discussions were continuing as to the fate of the Board's employees in those areas where its services had been curtailed. Whether the new unions are in a position to offer similar terms of employment that the Board offered is another matter. It is also questionable whether marketing co-operatives established on the government's insistence will be any more successful than the statutory body whose functions they will have to assume. Whether there will be adequate participation by primary societies, a factor which is necessary to instil confidence in the marketing co-operative and thereby ensure its success, is yet to be seen.

It is also important to consider the question of the economic viability of the marketing co-operatives under the new arrangement. It is clear from the guidelines that the co-operatives will operate merely as agencies of the Board and the government and as such, they have to look to both the government and the Board for reimbursement of their costs. According to the present arrangement, the provincial co-operative unions will receive payment for expenditure incurred for the transporting and handling of produce at least as far as the district depots, in addition to the cost of the purchasing of produce from farmers. Clearly, in this arrangement there is no room for any profit for the marketing co-operatives since what will be paid to them will correspond to what they have already spent, since the producer price for maize, (which is the most important

crop), is fixed. One area in which some profit could be made by the co-operatives is through the sale of agricultural requisites on behalf of the Board. In such instances the unions may charge an "appropriate" commission which may be fixed by agreement among the interested parties - the government, the unions and the Board. But, unless the Board is in a strong financial position, which it is not, such commissions are bound to be small. It is clear, therefore, that under the proposed guidelines, the profit motive for co-operative marketing unions, which is necessary to enable them to expand their operations in their respective provinces, has not received adequate attention. In the absence of a profit motive, the marketing of agricultural produce will remain what it has, since independence, always been, a service to the farming sector and thus a perpetual drain on the resources of the State. Little effort has been made to find ways and means of encouraging the participation of the private sector although such participation may not, by itself, be without its own drawbacks.

E. THE LINT COMPANY OF ZAMBIA

The establishment of the Lint Company of Zambia followed the change in marketing policy announced by the President in 1977. This change was aimed at reducing the

responsibility of the NAMB. Although Lintco, incorporated on the 29th of March 1978, professes to be the sole buyer of all cotton produced in the country, so long as cotton remains on the list of controlled products, the NAMB is legally the sole marketing body for cotton. The anomaly has not been rectified although, in practice, the NAMB does not handle cotton.

Unlike the NAMB and the TBZ which are statutory bodies, Lintco was incorporated under the Companies Act. This has not prevented the State from exercising control over its operations. The State appoints the members of the board of directors, a proportion of whom are representatives of government departments. There are eight members of the board of directors, all appointed by the Minister. Five of the members are not government officials, but the three are representatives of the Ministry of Finance, the Ministry of Commerce and Industry and the Deputy Managing Director of the Industrial Development Company (a parastatal body in which government owns fifty-one percent of the shares).

Lintco was incorporated to carry out the following functions:[152]

1. to improve productivity of cotton growers through the provision of inputs and extension services;
2. to achieve national self-sufficiency in cotton production so as to eliminate the importation of lint and cotton cloth; and
3. to achieve exportable surplus to earn foreign exchange for the country.

With an authorised capital of K3.1 million and issued share capital of K1.19 million, Lintco began operations in 1979.[153] Its operations were, however, confined to Central, Southern, Copperbelt, Western and Northern Provinces. In

the North-Western Province cotton was not widely grown, while in the Eastern Province, the Eastern Co-operative Union acted as the agent. Lintco's financial record has fared better than that of the NAMB. It has been able to generate foreign exchange but since the world price has been lower than the local price, the government has had to pay the company the difference in three successive seasons. With the dramatic fall in the value of the local currency, however, the world price should now be higher than the local price and government subsidy should no longer be necessary.

The company has had its own problems, however, namely the wide range of cotton farmers, the insufficient number of extension officers, and the lack of transport. In the face of these problems, the National Commission for Development Planning (the NCDP) has advised the government to take two measures. First the government should encourage cotton production only in those areas in which the cost of the operations to Lintco is minimal. Second, government should avoid forcing Lintco to operate in areas of high rainfall because the areas are not easily accessible and the quality of lint cotton produced in such areas is low. In its view, cotton production should be confined to the Central, Southern and Eastern provinces where, it says, there have been higher profits both for the marketing organisation and for the economy as a whole.[154] It has also urged Lintco to expand its ginning capacity.

Some observers have suggested that "government should adopt a programme of positive action which will create the conditions under which private merchants can render the greatest service to the economy".[155] In their view such

actions should include 1) the establishment of regular market places and market meetings in areas where there is sufficient volume of produce for sale so that buyers and sellers can meet, and 2) the provision of support services for rural markets in rural growth centres including areas for loading and unloading vehicles, accommodation for merchants, fuel and mechanical services for trucks, telecommunications, packaging materials and credit facilities. Regarding the pricing system, they, rightly, deprecate the determination of the price by cost of production method pointing out that this method failed to take into account variables in production costs from one farm to another resulting from different technical and managerial skills, factor endowments and distance from the market. They advocate that the free market should determine the price, but if this is otherwise undesirable a floor price could be introduced, thus permitting the influence, to some extent, of the forces of demand and supply.

Lintco's performance provides some lessons regarding the need for State control and the extent to which the State should use institutions to encourage the production of agricultural commodities. Lintco's performance has been better than NAMB's. A number of reasons may be suggested for this, among them that it is not a monopoly purchaser of cotton. The second lesson is that the greater the emphasis on extension services to encourage production, the greater the cost. While such cost may be minimised by concentrating its services in areas of least cost, in so far as prices are determined by government on the basis of non-market forces, Lintco can do little to improve its financial position. The

suggestion that cotton prices be left to market forces is, however, unsound because, in view of the underdeveloped nature of the country's textile industry, it would thwart the development of cotton production. It would be more helpful to set minimum prices only so that market forces would play a greater role and as a means of encouraging private enterprise without necessarily discouraging cotton farmers.

F. CONCLUSIONS

The exercise of State control over the production and marketing of agricultural products has a long colonial history. Various purposes have been served by such control. After independence, the use of statutory marketing bodies as the instrument of control, coupled with government's power to determine the price of commodities found favour and the marketing bodies established in colonial days continued in operation. Statutory boards have played different roles. While the NAMB has been a monopoly purchaser of maize and agricultural requisites, the TBZ has controlled the production and marketing of tobacco. As the operation of these boards has expanded inefficiency has arisen and, in the case of the NAMB which handles crops whose purchase and sale prices are set by the government, losses have been incurred. This is all too common with marketing boards in

developing countries elsewhere. Jorgensen and others have observed:

> "Marketing boards face a variation of Parkinson's law: the bureaucracy expands to consume the surplus available. What should have been a mechanism for smooth fluctuations in government and farmer revenue becomes instead a self-perpetuating drain on revenue."[156]

From the time of NAMB's creation, there have been persistent complaints regarding its performance, some of them "well-founded".[157]

The Board's difficulties are not only the result of inefficiency. They are the result of excessive government control over its operations which have forced it to operate even in areas in respect to which its operations were uneconomic, in the hope, on the part of the government, that this would encourage peasant farmers to enter the market economy. Because of this, the incentive to make a profit has been denied to the Board. The Board's initial failure has also been attributed to the broad spectrum of controlled products which the Board had to handle.

The TBZ has fared better because, among other reasons, the government pricing system for tobacco has permitted a wider profit margin. While the government sets the floor price, the TBZ can count on the market forces on the auction floor to enable it to make a profit. Nonetheless, attempts at increasing its role, namely encouraging tobacco production under various schemes, have proved beyond its capacity.

Government's reaction has been to reduce the role of both the NAMB and the TBZ, and to create or encourage other institutions to participate in the provision of marketing

services. Whether the decision of the government to leave marketing (other than the marketing of tobacco) at primary or rural level to marketing co-operatives is a sound alternative remains to be seen. Their financial base, particularly that of the newer ones, has already been brought into question. In 1984, some of these co-operatives failed to pay the NAMB for fertilizer. In turn, the NAMB refused to pay them for the maize delivered to it. The result was that co-operatives either failed to pay the farmers altogether or paid them late.[158] The reason for their liquidity problem that year was that the government did not give co-operatives adequate funds to cover the difference between the cost of their services and their actual revenue. The payment of the funds itself has been necessitated by the fact that government has been setting uneconomic prices of many agricultural commodities and requisites, a measure which benefits the consumer, but does not cover the actual cost of the marketing service. The general conclusion that may be made on the basis of Zambian experience is that while State control may serve to promote increased production of agricultural produce of good quality, such an increase in production cannot be maintained if other factors such as the participation of private entrepreneurs, and the role of market forces are ignored. The steps, begun in the early seventies, taken to de-control some agricultural commodities, illustrate the government's realisation of this fact. Additional measures are, however, necessary to ensure the economic viability of the NAMB. The Board could benefit from the limitation of government's power to fix prices of commodities to minimum or floor

prices, and the limitation of its own role to that of a residuary buyer.

NOTES

1. Republic of Zambia, Ministry of African Agriculture, Report of the Rural Economic Development Working Party, op. cit., pp. 86-87.

2. Ibid., p. 87. See also Hadfield, J., "The Marketing of African Agricultural Produce in Northern Rhodesia", Agricultural Bulletin, No. 18, (Government Printer, Lusaka, 1961), p. 3.

3. Report of the Rural Economic Development Working Party, op. cit., p. 88.

4. Ibid. See also Makings, S.M., Agricultural Problems of Developing Countries in Africa, op. cit., p. 99.

5. Ibid., p. 88.

6. Marter, A., Cassava or Maize: A comparative study of the economics of production and market potential of cassava and maize in Zambia, (Rural Development Studies Bureau, University of Zambia), 1978.

7. Republic of Zambia, Ministry of Agriculture and Water Development, Annual Report of the Department of Marketing and Co-operatives, 1981 (Government Printer, Lusaka, 1983), p. 10.

8. Report of the Rural Economic Development Working Party, op. cit., p. 89.

9. Ibid.

10. Ibid., p. 91.

11. Stutley, P., "Government Intervention in Agricultural Marketing", in Hunter, G., et. al., (eds.), op. cit., p. 330.

12. Ibid.

13. Report of the Rural Economic Development Working Party, op. cit., p. 91.

14. Stutley, P., op. cit., p. 332.

15. Ibid., p. 333.

16. Ibid.

17. Ibid., p. 338.

18. Lombard, S.C. and Tweedie, A.H.C., Agriculture in Zambia Since Independence, (Institute of African Studies, University of Zambia, 1972), p. 18.

19. The G.M.B. was created by the Grain Marketing Board Ordinance, cap. 97 of the Laws of Northern Rhodesia.

G.N. No. 97 made by the Governor abolished the older Federal Grain Marketing Board by amending the Grain Marketing Act, 1957, No. 23 of the Statute law of the Federation of Rhodesia and Nyasaland.

20. Under the Act, the Minister could, by statutory order, declare any agricultural product or anything derived from it as a "controlled product" and could also prescribe the area within which the product was to be considered a controlled product.

21. G.N. No. 214 of 1964.

22. G.N. No. 215 of 1964.

23. G.N. No. 190 of 1966.

24. S.I. No. 289 of 1966; S.I. No. 167 of 1967.

25. S.I. No. 165 of 1968.

26. S.I. No. 290 of 1969.

27. Ocran, M.T., Towards a Jurisprudence of African Economic Development: A case study of the evolution of the structure and operations of Zambia's Food Crop and Cotton Marketing Boards from 1936 to 1970 (PhD Thesis, University of Wisconsin, University Microfilms, 1971), p. 136.

28. Ibid., p. 143.

29. Ibid., p. 132. There appears to be a general feeling that the G.M.B. was created to serve commercial farmers settled along the old line of rail... See Katilungu, H., and Zeko, P., "An appraisal of Agriculture Marketing and Pricing Policies of Maize and Tobacco", National Commission for Development Planning and the University of Zambia, Ncube, P.D., (ed.), Agricultural Baseline Data for Planning, vol. 1, July 1983, p. 256.

30. Ibid.

31. Ibid., p. 143.

32. Ibid., p. 136.

33. Ibid., p. 154.

34. Cap. 99 of the Laws of Zambia.

35. S.7.

36. S.4.

37. Ocran, M.T., op. cit., p. 154.

38. G.N. No. 25 of 1964.

39. S.I. No. 67 of 1964.

40. Ocran, M.T., op. cit., p. 161.

41. S.I. No. 90 of 1965.

42. Ocran, M.T., op. cit., p. 162.

43. S.I. No. 238 of 1966.

44. Ocran, M.T., op. cit., p. 162.

45. Ibid., p. 171.

46. Ibid., p. 173.

47. Ibid., p. 175.

48. S.4.

49. S.5(2).

50. S.8(2).

51. S.8(3).

52. S.2.

53. S.18.

54. S.20.

55. S.19.

56. S.21(1).

57. S.21(2).

58. S.21(3).

59. See the NAMB'S Annual Reports for the years 1976, 1977, 1978, 1979 and 1980.

60. S.22.

61. S.I. No. 169 of 1970. For acceptance standards regulations see S.I. No. 159 of 1971.

62. S.29(5) and (6).

63. S.I. No. 143 of 1970.

64. S.I. No. 144 of 1970.

65. Dodge, D.J., op. cit., p. 83.

66. Ocran, T.M., op. cit., p. 196.

67. Cabbage, tomatoes, lettuce, onions, potatoes, pumpkin, water melon, carrots, gem squash, sweet potatoes, green beans, mushrooms, egg plants, garlic, okra, asparagus,

peas, celery, oranges, lemons, turnips, beetroot, radish, papaya, avocado pears, marrow, granadilla, spring onions, and rape.

68. Dodge, D.J., op. cit., p. 84.

69. Ocran, T.M., op. cit., p. 202.

70. Ibid., p. 203.

71. NAMB, Annual Report, 1977, p. 1.

72. Ibid., Annual Report, 1978, p. 8.

73. Ibid., Annual Report, 1977, pp. 5-6.

74. Namboard Today, 1984, 16, 1, 7.

75. Ibid., p. 5.

76. Dumont, R., Towards Another Development in Rural Zambia, (Government Printer, Lusaka, 1979), p. 39; Simoko, P., "Peasant Farmers Reap Raw Deal", Times Review, Sunday Times of Zambia, September 9, 1984.

77. NAMB, Annual Report, 1978, p. 12.

78. Zambia Daily Mail, Saturday, October 5, 1985, p. 3.

79. NAMB, Annual Report, 1976, p. 2.

80. Ibid., Annual Report, 1977, p. 1.

81. Ibid. See also the Annual Report, 1981, p. 13 where it is stated that failure by parastatal bodies and some co-operative unions to pay their debts caused serious liquidity problems to the Board.

82. Simoko, P., op. cit.

83. Republic of Zambia, Report on the National Agricultural Marketing Board, prepared by Williams D., and Wardale, T., (Government Printer, Lusaka), 1971.

84. Ibid., p. 6.

85. Ibid., p. 11.

86. Zambia Daily Mail, Monday, May 12, 1986.

87. Dodge, D.J., op. cit., p. 87.

88. Ibid., p. 88.

89. Mbinda, E.M., "Bottlenecks in Fertilizer Distribution", Namboard Today, 1978, 11, 16.

90. NAMB, Annual Report, 1981, p. 8.

91. Mbinda, E.M., op. cit., p. 17.

92. Ezeokafor, G.O., "Why Namboard does not make a profit", Namboard Today, 1978, 11, 6.

93. Katilungu, H., and Zeko, P., op. cit., p. 219.

94. Ibid.

95. Ibid.

96. Dodge, D.J., op. cit., p. 92.

97. This was established to replace the Agricultural Marketing Advisory Committee which had advised the Federal Government on the same matters.

98. Dodge, D.J., op. cit., p. 95.

99. Republic of Zambia, Ministry of Agriculture, Review of the Operations of the Agricultural Marketing Committee During the Year Ending 30th June, 1968, (Government Printer, Lusaka, 1968), pp. 3-4.

100. Dodge, D.J., op. cit., p. 101.

101. S.I. No. 83 of 1975.

102. Dodge, D.J., op. cit., p. 103.

103. Katilungu, H., and Zeko, P., op. cit., p. 232.

104. Ibid., p. 234.

105. Ibid., p. 260.

106. S.I. No. 62 of 1973.

107. There is another such Board, the Daily Produce Board (D.P.B.), responsible for the promotion of animal husbandry and the dairy industry.

108. No. 64 of 1967 as amended by Act No. 46 of 1970.

109. S.4.

110. S.14.

111. S.26.

112. S.36(2).

113. S.38.

114. S.44.

115. S.52. The expression "auctionable tobacco" is defined under section 2 to mean any class of tobacco prescribed by the Minister as such and is required to be sold by auction on a licensed auction floor.

116. S.74.

117. No. 65 of 1967 as amended by Act No. 20 of 1968.

118. S.I. No. 160 of 1968.

119. S.8.

120. Republic of Zambia, Ministry of Rural Development, Department of Marketing, Annual Report for the Year ended 31st December, 1974, p. 10.

121. Ibid.

122. Katilungu, H., and Zeko, P., op. cit., p. 259.

123. S.I. No. 129 of 1968.

124. S.I. No. 142 of 1968.

125. S.I. No. 140 of 1968.

126. S.I. No. 141 of 1968. The prescribed varieties of virginia flue-cured tobacco are: Bonanza, Canadel, Delorest, Hicks, Jamaica, Wrapper, Kutsaga 51, Romos 7, Trelawney C.7, White Gold, White Stem, Orinoco, and Yellow Mammoth. The prescribed variety for burley tobacco is Burley 21. Samsun is the prescribed variety for oriental tobacco, and for the rest of the classes, Malawi western is the only variety. These regulations were amended in August 1969, by S.I. No. 354 of 1969, so as to include Kutsaga E.I. and Kutsaga E.2 among the varieties of virginia flue-cured tobacco. Again in 1973, the Minister, by the Tobacco (Prescribed Varieties) (Amendment) Regulations, S.I. No. 33 of 1973 added virginia mammoth as one of the varieties that may be grown in the country.

127. Lombard, S.C. and Tweedie, A.H.C., op. cit., p. 25.

128. Republic of Zambia, Ministry of Development and Finance, Economic Report, 1969, p. 123.

129. Ibid.

130. Republic of Zambia, Ministry of Rural Development, Department of Marketing, Annual Report for the Year Ended 31st December, 1970, p. 4.

131. Republic of Zambia, National Commission for Development Planning, Economic Report, 1982, p. 96.

132. Ibid., Economic Report, 1983, p. 77.

133. Ibid., Economic Report, 1984, p. 99.

134. Ibid.

135. Dodge, D.J., op. cit., p. 91.

136. Republic of Zambia, Ministry of Rural Development, Department of Marketing, Annual Report for the Year Ended 31st December, 1974, p. 10.

137. Dodge, D.J., op. cit., p. 92.

138. Republic of Zambia, National Commission for Development Planning, Economic Report, 1982, p. 96.

139. S.29.

140. S.32(1).

141. S.32(2).

142. S.32(3).

143. S.32(4).

144. S.32(5).

145. Roberts, R.A.J. and Elliott, C., "Constraints in Agriculture", in Elliott, C., (ed.), Constraints on the Economic Development of Zambia, op. cit., p. 289.

146. Republic of Zambia, Ministry of Agriculture and Water Development, Department of Marketing and Co-operatives, Annual Report for the Year Ended 31st December, 1980, p. 1. See also Annual Report for the Year Ended 31st December, 1981, p. 1.

147. Ibid.

148. Ibid.

149. Total maize purchases by the co-operative amounted to 36,528, 90 kg. bags while, on its behalf, the Kaoma East Multi-Co-operative Society purchased 23,962 90 kg. bags of maize. There were smaller purchases of sunflower, soya beans, ground nuts and rice: Annual Report, 1981, op. cit., p. 13.

150. Interview with Mr. S. Simasiku, Deputy Director of Co-operatives, Ministry of Agriculture and Water Development, Mulungushi House, Lusaka, 25th April, 1985.

151. Ibid.

152. Lintco, Annual Report, 1981-1982, p. 24.

153. Ibid., Annual Report, 1980-1981, p. 10.

154. NCDP, Economic Report, 1984, p. 131.

155. Mweetwa, J., et. al., op. cit., p. 372.

156. Jorgensen, J.J., et. al., "Market Imperfections and Organizational Structure" in Kindra, G.S. (ed.), Marketing in Developing Countries, Croom Helm Ltd.,

London, 1984), p. 176.

157. Klepper, R., "Zambian Agricultural Structure and Performance", in Turok, B., (ed.), Development in Zambia: A Reader, (Zed Press, London, 1979), p. 142.

158. NCDP, Economic Report, 1984, p. 130.

CHAPTER SIX

CONCLUSION

The goal of African governments has been stated to be economic development, generally understood to mean the incremental change in the per capita income of the greatest number of the population. Various kinds of measures have been introduced to speed up the process of such economic change. These new measures have included the establishment of new institutions and legal norms to serve government economic policy. In this way law has been relied upon, in part, as a tool to accelerate economic development. Zambia offers one example of the extent to which African governments have sought to use law as an intrument for the realisation of their economic policies. The use of law in this manner has raised a complex debate as to the role of law in the development process. It is itself an extension of the role of law from that of the settlement of disputes to that of accelerating the social and economic transformation of society.[1]

A leading exponent of the role of law in development, Robert Seidman, explains:

> "The legal order is the tool most easily available to politically organized society to bring about purposive social change. Law does this by redefining norms so that if the new rules in fact induce the behaviour which they prescribe, new patterns of social interaction will ensue. Society will be to that extent changed."[2]

The State, therefore, must take the "initiative to determine

the course of social change - rather than the Church, family or village" this responsibility being a reflection of society's transformation from kin-oriented, agricultural subsistence communities into exchange societies with a high degree of specialisation.[3] Society's demand for development appears in the form of demands for new legislation "concerning land tenure, marketing boards, planning machinery, electoral politics, educational institutions, monetary systems, taxation".[4]

That law may be an instrument of development draws considerable support from a wide spectrum of scholars. Atiyah, for one, says that it is mistaken to think that law can never be used to change social attitudes and thus to lead by example.[5] He states that law is not an independent autonomous institution with purposes of its own but "merely a tool, an instrument by which policies and goals otherwise decided upon can be aimed at by those who make and enforce the law".[6] Elias, for another, identifies four major aims that could be set for law in Nigeria and these include the promotion of economic growth and social well-being.[7] He asserts the interdependence of law and economics as instruments of social control although the extent of their interaction may vary with the type of government in a given country.

This conception of the role of law has led to attempts to formulate theories regarding law and development[8] but these attempts have merely produced abstract theory divorced from political practice.[9] Little attempt has been made to show how state power can be used to overcome underdevelopment. It is in this regard that Robert Seidman

is an exception because he has made some practical proposals on how a government can use State power to "solve the problems of the poor, poverty and oppression".[10] Seidman acknowledges that all too frequently law fails to induce the prescribed behaviour because those in government lack a proper understanding of how law affects behaviour. In his view, people to whom the law is addressed (role occupants) choose whether or not to obey within the constraints and resources of their physical and social milieu as they perceive it and the role occupants will consciously conform their behaviour to the dictates of the new legal order if certain conditions are fulfilled, which are that the law states explicitly how they should behave, they learn of the rule through a two-way communication channel, they have the opportunity and capacity to obey, the rule does in fact and it is perceived to serve their interest, and they decide whether to obey in a public, participatory, and problem-solving process. Consequently, the legal order can change the behaviour of role occupants if they have a participatory relationship with law makers. The need for clarity is particularly stressed because "if a rule or policy wallows in ambiguity or vagueness, its addressee must behave as he thinks best".[11] Thus the law-makers have a dual task: they must accurately predict that the role occupant will confront the necessity of choice whether or not to obey, and that he will choose to obey, and among the several factors that influence the decision whether to obey is whether official sanctions will be applied.

At the interface of the law-making process are the law-trained professionals. Depicting the importance of

these professionals in the law making process, Seidman says:

> "In every government, there are some actors whose roles place them at the interface between ends and means, between policy formulation and implementation. Very frequently, this interface is where policies are transformed into law, for it is at that point that the generalities are given programmatic content. That interface is a broad one comprising many actors: those who draft the legislation, structure options, raise queries, and submit or review drafts, as well as those who finally decide 'yea' or 'nay' on particular formulations. Titles vary: permanent secretary, ministerial counsel, consultant, civil servant, parliamentary draftsman, solicitor general, and so on."[12]

Unless lawyers occupying these positions are aware of both the policy implications of their contributions to the decision-making process, and the inherent limits upon the law, their efforts will meet with mixed results. It would appear then that those at the interface between policy and the means of its accomplishment need special training and understanding of how law affects human behaviour.

The need for specialisation, or what Martin calls technocracy should not apparently, be over emphasised since it will limit the participation of the role occupants in the decision-making process which according to Seidman is crucial if they have to obey.[13] Seidman also proposes certain conditions for development. He says that solving the problems of poverty requires a new legal order, not the application of existing rules through existing institutions or the creation of new institutions such as parastatal corporations whose managers enjoy great power and discretion. In his summary of the explanation of the failure of development efforts in Africa, Seidman says:

> "Development paradoxically created elites out of programmes that tried to raise the mass.

> They endowed administrators with broad and quite uncontrolled discretion; they created parastatals in which managers realistically need not account to their government shareholders; they created governments that did not serve parliament and bureaucracies that did not serve government. At the same time, these programmes did not effect much change in favour of the dispossessed. Development required change; change required participation; but development programmes ran from the top down. Development required unitary, not compartmentalized decision-making to solve emergent problems; African administration became fragmented. Development required communication channels to the poor; very few such channels existed in Africa."[14]

In order to determine whether there have been any changes in Zambia calculated to induce development after independence the colonial legal and institutional framework was discussed. At the beginning of the colonial era, a truncated form of English law was introduced into the protectorate of Northern Rhodesia with a broad exception made for the application of customary law. Customary law applied to Africans who largely lived and worked in the subsistence sector. It was an appropriate law at the time growing, as it did, out of the exigencies of African societies dominated by simple technologies and low levels of production, specialisation and exchange. English law applied mainly to Europeans and provided an appropriate legal framework for the development of export-oriented modern industries. The colonial government was noted for its extensive use of law to achieve various goals. A variety of laws - poll tax, hut tax, licensing regulations etc., drove Africans into the industrial sector.

The role of the agricultural sector during this period was to provide a sufficient food surplus to feed the urban

community. Given this restricted objective it is not surprising that emphasis, until the late forties, was on European farmers. Thus, colonial land policy, particularly that of native reserves, although ideally meant to preserve sufficient land for the use of Africans while the rest would be available for European occupation, resulted in the carving out of most of the best land for the latter. It was only after noting the appalling conditions in the native reserves in the late forties that more land was made available to Africans under the policy of native trust land.

On Crown Land, however, the colonial government faced a dilemma as to whether to continue with the freehold system introduced by the BSA Company, or to lay emphasis on the leasehold system. The issue was how to encourage European farmers under a system that offered maximum security of tenure, i.e. freehold, but retain sufficient control to impose development requirements through a leasehold system. This controversy was not settled until 1959 when, despite official government reservations, the freehold system carried the day but with the proviso that it would be preceded by a period of leasehold during which substantial development of the land would be required. But even prior to this compromise, land in certain parts of the country had been granted in leasehold, particularly agricultural land, and in these areas, the selection of tenants was based on proven capacity to undertake farming.

The Agricultural Lands Ordinance in which the compromise was concretised has been one of the most important legacies of the colonial government and to this day constitutes one of the instruments of State control of

land. While these measures were being taken to promote agricultural development on Crown Land, no such measures were introduced in the Reserves and Trust Land. It was apparently felt that the ordinances that sought to preserve natural resources, prevent the spread of noxious weeds and bush fires were adequate. In fact, there was little, if any, enforcement of these ordinances. Consequently, one may argue that with respect to customary land, the colonial government did not see fit to use law to bring about land development.

Credit featured prominently in the establishment of a viable agricultural base in Northern Rhodesia. Two features emerge from the nature of government intervention in the provision of credit during the colonial era. The first is that, as with land control, attention was focussed mainly on the commercial farming sector. The received English law regarding credit, with its emphasis on mortgages of land the title to which could be evidenced by certificates of title, was not suitable to customary land in respect of which, until 1963, there was no system of registration of title. Government intervention in the form of the Agricultural Credits Ordinance, although meant to facilitate the creation of a charge over agricultural implements and livestock had, if any, only a marginal effect on subsistence farmers not only because, by definition, they were excluded, but also because few of them could afford agricultural implements and livestock of substantial value. The second feature of government intervention was the creation of a specialised credit institution, exclusively for the agricultural sector.

The creation of the Land Bank with government funding

was an attempt to channel funds from the industrial sector to the agricultural sector. It was also an extension of the role of the State from that of merely creating the conditions in which private enterprise could flourish to one of providing services which, even in a modern welfare state would not form part of government responsibility. As an instrument for promoting agricultural development, the bank's reliance, in the main, on land as security, rendered it vulnerable to changes in land values. From 1959, the constitutional future of the country began to cause anxiety to many European farmers and the bank experienced difficulties finding buyers of the farms mortgaged to it.

The extension of the role of the state also covered the marketing of agricultural produce. A certain amount of State control over the production and marketing of agricultural produce commenced as early as 1935 under the Maize Control Ordinance, 1935. By this Ordinance, the government established the Maize Control Board. The role of this board was the carrying out of the orderly marketing of maize along the old line of rail. To this end quotas were allocated to European and African producers. Consequently, the ordinance made little contribution to agricultural development if the expression development is taken to mean the general economic progress of the broad masses of the farming community. It was, in fact, a retrogressive step as it was intended to safeguard the interests of European maize growers who felt threatened by competition from African subsistence farmers at a time when there was a strong probability that there would be over-production. The only useful contribution was the idea of the use to which

government may put statutory boards to achieve a particular result - whatever this might be. It was not, however, until 1964, three months before independence that the idea was utilised with the more progressive objective of providing marketing services in the rural areas. The idea took the form of the Agricultural Rural Marketing Board.

What emerges from the colonial era is the use of law to promote development in the European farming sector. A question that may be posed is whether the progress of African producers which in 1935 prompted the estabishment of the Maize Control Board was linked to any legal phenomena. It has been established that there was little in the way of law to assist African producers until towards the close of the colonial era. The question that arises then is the importance of law in the development process. As far as the colonial era is concerned it can be stated that with regard to African agriculture, law played no part in its progress, and that in fact, progress was achieved by African farmers inspite of the laws relating to landholding, credit and marketing which prevented African producers from participating fully in the cash economy. This is not to suggest, however, that progress is possible or can be maintained without a proper legal framework. It is probable that there would have been greater progress if the law had not operated to the disadvantage of African producers or if a suitable legal framework to encourage the African producer had been evolved. It is, moreover, sufficient for our thesis to state that the success of the European farming community must be attributed, in part, to the legal framework for agricultural production that, by and large,

favoured it.

Exactly one month after independence, the new government appointed a commission of inquiry to look into the land policy and furnished the commission with its own views as to the goals that land policy must pursue. The commission's report was, however, a dead letter because it did not satisfy government aspirations. Consequently, until the land reforms introduced in 1975, government exercised control only over agricultural land under leasehold tenure, a small proportion of which fell under the Agricultural Lands Act. Unfortunately, no steps were taken to incorporate government policy into the Act. The Agricultural Lands Act which had been meant to serve as a compromise between the interests of the colonial government and those of the powerful, largely expatriate, farming community, became the basis of implementation of a new government land policy without any evaluation of its suitability for the same. Consequently problems have arisen between the Agricultural Lands Board and the Minister with respect to the exercise of their respective functions. The Board has often expressed dissatisfaction with what it has seen as unwarranted ministerial interference with the exercise of its powers. The reason for this occurrence is that the Ministers have sought to implement government policy which in many respects is not the same as that in the Agricultural Lands Act. The Agricultural Lands Board is equally handicapped because it is not able to apply existing values or policy within the present framework of the Act. Consequently, there are occasional inconsistencies in the application of the criteria for land allocation or consent

to assign, and in some cases express provisions have had to be glossed over. This is the result of seeking to implement new government policy through existing colonial legislation. Consequently it is not surprising that the Agricultural Lands Act has not measured up to government development goals. In its present form the Act cannot be relied upon to achieve what government conceives as its development goals.

Before 1975, outside leasehold land government was powerless to control land. One measure introduced in 1970, the Lands Acquisition Act gives the State the widest possible power to acquire land compulsorily. This power was intended to be used to repossess farms left vacant, undeveloped or unutilised. That such power should be granted to the State was necessary because many European farmers had left the country following independence and it was hoped that the Act would be used extensively for this purpose. In spite of the initial optimism the actual result was disappointing for various reasons. The Lands Acquisition Act failed to serve this purpose because it is too complex a piece of legislation to be utilised effectively. The ordinary land officer with limited legal training is required to make on the spot determination whether land is adequately developed in accordance with the difficult definitions in the Act. An Act which is vague in addition to requiring complex procedures cannot be expected to achieve its purpose. The failure of this Act brings out the importance of those persons Seidman identifies as being at the interface between the formulation of policy and its concretisation into law. These are supposed to include permanent secretaries, ministerial counsel, parliamentary

draftsmen, consultants, etc. They are supposed to understand how law affects behaviour in this case, whether it can be effectively implemented bearing in mind the quality of available manpower. It is rather doubtful that the civil servants and all those who occupied this position, having been appointed during the colonial era, and generally wary of the real intentions of the new government did all they could to provide a framework through which government policy could be implemented. The failure of the Act also demonstrates the extent to which the role of law in development is impeded by practical difficulties such as manpower and financial constraints.

The failure of the Lands Acquisition Act prompted the government to implement its long-conceived land policy, this time without resort to an inquiry. There are defects with the Land (Conversion of Titles) Act which require government attention and, like all development-oriented legislation, its operation requires constant monitoring and gradual improvement. The importance of the Act lies in the system of control it imposes. This system includes the imposition of development conditions and the imposition of the minimum size of farms. The latter has not yet been done, but the former has been effected through schedules to the Act. This system of control has similarities with that binding on tenants of scheduled farms under the Agricultural Lands Act. The major constraint on the enforcement of development covenants is manpower. The present system of land administration is too centralised as there are only three provincial land offices. The government has, however, begun to take steps in the right direction by confering power on

local authorities to consider applications for land in their districts. Because local authority offices are closer to farmers, it would be easier for them to monitor the use being made of agricultural land and enforce development covenants, consequently, it is suggested that the power of local authorities be extended so as to involve them in the administration of agricultural land. Without effective enforcement of development covenants, the impact of the Land (Conversion of Titles) Act as an instrument of government development policy will be minimal.

Unlike State Land with regard to which government has taken bold steps to encourage development, the Reserves and Trust Land have remained largely neglected. Despite the sweeping provisions regarding the application of the Land (Conversion of Titles) Act, practical realisation of its objects in the Reserves and Trust Land has not been evident. This is rather surprising bearing in mind government policy which stresses the subsistence farmers as the basis for rural development. Government recognises the danger of land accumulation which may result from the customary mode of landholding, thereby, impliedly advocating State control in the Reserves and Trust Land. No measures, however, have been taken so far in the Reserves and Trust Land in pursuance of this policy and government has been treading very cautiously. Land rights in the Reserves and Trust Land remain largely customary.

One of the theses developed is that customary land tenure inhibits agricultural development because of the degree of uncertainty that surrounds rights in fallow land, grazing land and the insecurity felt by "strangers" and

persons living in their spouse's village. In particular, the absence of control over land use has threatened the continued fertility of some parts of land among cattle-owning communities. Of late there have been persistent calls by some farmers for some system of registration of title in the hope that they may use the land as security for loans. Although the recent Land Commission which covered the Southern Province displayed the usual caution by declining to make any proposals regarding customary land tenure, the demand for registered title to land calls for the examination of the present system of grants of non-customary interests in the Reserves and Trust Land as a possible alternative to wholesale registration of title.

Grants of non-customary interests in land in the Reserves and Trust Land are being made under the colonial Orders-in-Council, such interests having originally been provided for to cater for European settlement for a temporary period. With the coming of independence these orders have been used to enable farmers who are dissatisfied with customary land tenure to obtain leases and occupancy licences with title deeds. One of the issues that arises is whether the system, based as it is on individual initiative is better than a systematic adjudication of the rights of all members of a given community in a district or region, and then registering their rights in such land. There are various advantages in relying on individual initiative both from the government's standpoint and from that of the communities themselves. There is no requirement of additional manpower and less controversy as the demand for

registered title has been more pronounced on the part of those whose ambition is to use land as security. Moreover, individual initiative may be defended on the basis of the differences in the systems of land use among various ethnic communities.

It is, however, also true that ordinary villagers cannot take advantage of the system due to complicated procedures and the inhibitive costs of surveying the parcels of land. On a national level individual initiative is unplanned, thus adding to the difficulty that government may face in enforcing the terms of the leases and occupancy licences. Moreover, individual initiative does not take into account the future requirements of the growing population in the Reserves and Trust Land and the limitation of two hundred and fifty hectares per person is not only excessive but is not a legal requirement but a mere administrative practice. To strike a balance between the interests of those who demand registered titles and the interests of those who may still benefit from the flexibility of customary land tenure, the solution would appear to be to introduce registration of title in areas where conditions already exist - permanent cultivation and scarcity of land, and leave the rest of the areas available to registration of title by private initiative. The second issue relates to the nature of the rights and obligations of lessees and licensees. The obligations, particularly that requiring the construction of substantial buildings within a period of twenty-four months from the date of the grant, are unsuited to ordinary villagers with limited financial resources. This is yet another indication of the futility

of relying on legislation of an earlier vintage meant to serve a different purpose.

Unlike customary land with respect to which government policy has not been concretised into law, agricultural credit policy has found expression through the operation of specialised credit institutions, statutory or otherwise. The need for government intervention through such institutions arises from the lack of interest on the part of commercial banks to lend directly to small scale farmers who lack adequate security. At present, commercial bank lending to the agricultural sector may be outstripping their lending to the manufacturing sector but much of their investment in the agricultural sector is actually directed at commercial farmers and government credit institutions.

Earlier government efforts to broaden the range of farmers who should have access to credit appear to have seriously compromised the economic viability of the credit institutions. As credit was seen as the starting point in agricultural growth little attention was paid to the particular circumstances of the land which was to be farmed and the individual applicant's abilities. Although one may agree with Seidman's explanation of the failure of public corporations (such as government credit institutions) to eradicate poverty as the result of the wide discretion with which managers of these corporations are vested, in practical terms, however, at least in the case of credit institutions in Zambia, the problem appears to have been the lack of discretion. In the early days of the COZ, for instance, government influence in the operation of this institution and insistence on lending to rural co-operatives

as part of the overall government rural development policy was very significant. In spite of the drive towards more credit to small scale farmers little has been done to fortify the interests of the lenders. The remedies available are still mainly common law remedies of an action for a debt. Even the nature of the security commonly used, the stop order, is of doubtful legal significance. Thus, stop orders have, in some instances, been largely ignored by the marketing agencies to whom they have been addressed.

The idea of participation in the decision-making process at district or village level which is currently being practised by the AFC (but has no place on the ZADB administrative structure) should have served the purpose of mobilising local knowledge of credit worthiness and educating prospective borrowers as to the importance of complying with contractual obligations, but has achieved little in these directions. Consequently, in an attempt by managers of public corporations to operate on sound business principles they have circumscribed the range of farmers who can be helped. It is now more difficult to obtain a loan than it was ten or five years ago.

Government intervention through the operation of public corporations has also been extended to the production and marketing of agricultural commodities. Government statutory boards play different roles, some enjoy monopoly powers while others play residuary roles. While, as in the case of credit institutions, these statutory boards would appear to enjoy too much discretion, in practice, their operations are under government control. The initial problems of the NAMB were attributed, in part to inefficiency, but also excessive

government control which forced the NAMB to maintain marketing services in areas in which such services could not be economically justified even when its operations were as broad based (in terms of agricultural commodities they could handle) as possible. In the legal context the board's functions were too broad while in practice it was denied managerial autonomy to operate in a business-like manner.

The operations of the public corporations which have been used as instruments of government policy also have a bearing on the limit to which law can be used to achieve development. However adequate the legal framework within which they were to operate, this, by itself would not surmount practical difficulties. Credit institutions must be able to supervise their borrowers, but if the majority of these borrowers are subsistence farmers scattered over a wide area this is difficult to achieve. Consequently, the returns on their investment will be marginal and the institutions will fail. Similar difficulties face marketing boards. Distance from farmers mean greater operational costs, and if such costs are not recouped, the institution will fail.

These practical constraints are not a negation of the role of law in development but the inter-dependence between law and social, political and economic factors. Law and development theories are about how to change human behaviour to achieve a given set of policy objectives. These objectives must themselves be capable of achievement. Zambia's experience with agricultural policy shows the contrast between the law in the statute books and the law in action. The failure of law in achieving its objectives has

not been for want of political commitment but for the fact that the circumstances in which the law is to operate have not been seriously considered.

NOTES

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2. Seidman, R.B., "The Lessons of Self-Estrangement: On the Methodology of Law and Development", Research in Law and Sociology, 1978, 1, 1, 8.

3. Seidman, R.B., "Law and Development: the Interface Between Policy and Implementation", Journal of Modern African Studies, 1975, 13, 4, 644.

4. Ibid., p. 643.

5. Atiyah, P.S., Law and Modern Society (Oxford University Press, 1983). On page 77 Atiyah says "many contemporary theorists would accept the thesis that the law at any given moment can be used in an instrumental way, that it is possible to change and adapt law in order to attain a given objective".

6. Ibid., p. 74.

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11. Ibid., p. 101.

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13. Seidman, R.B., The State, Law and Development, op. cit., p. 163.

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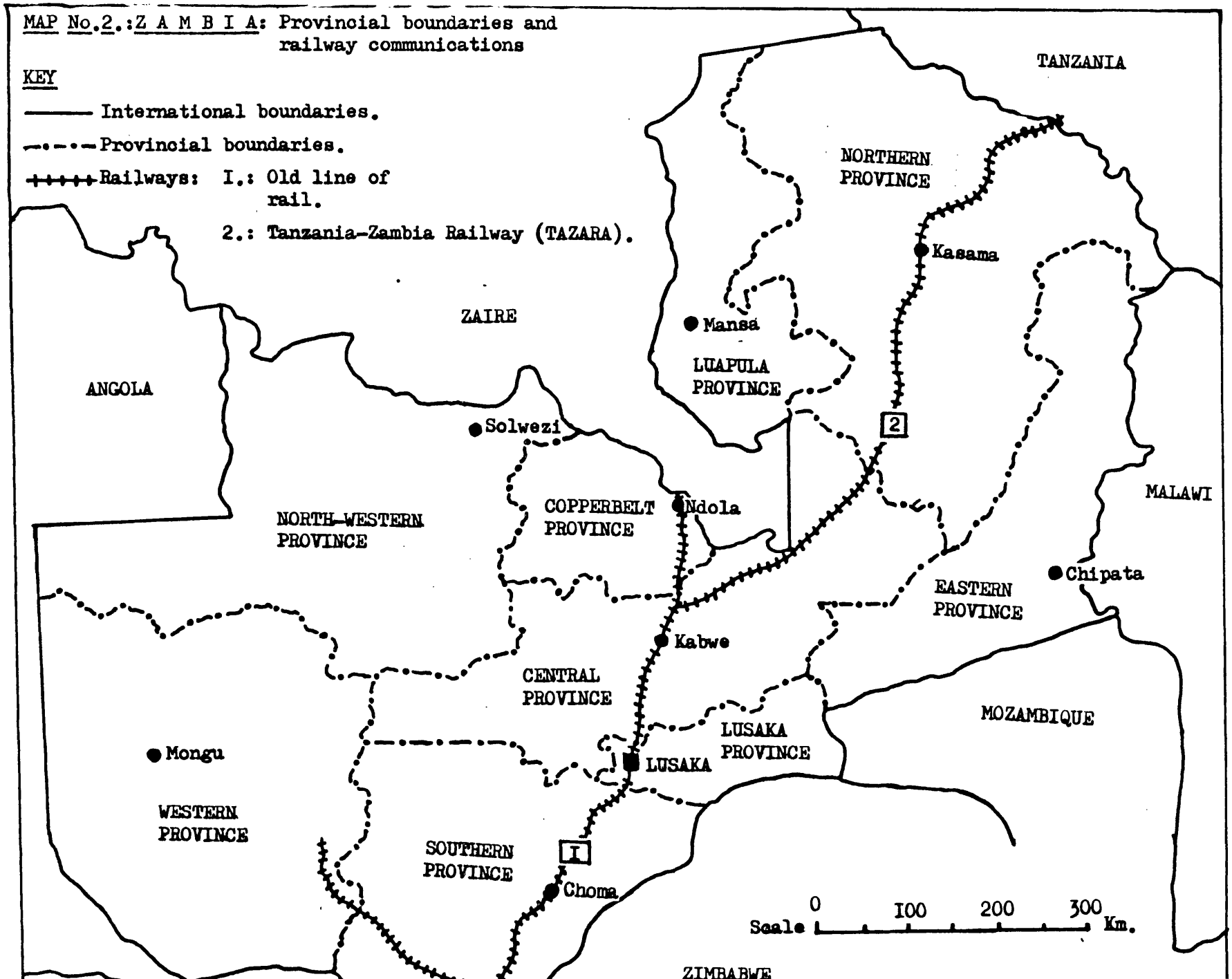
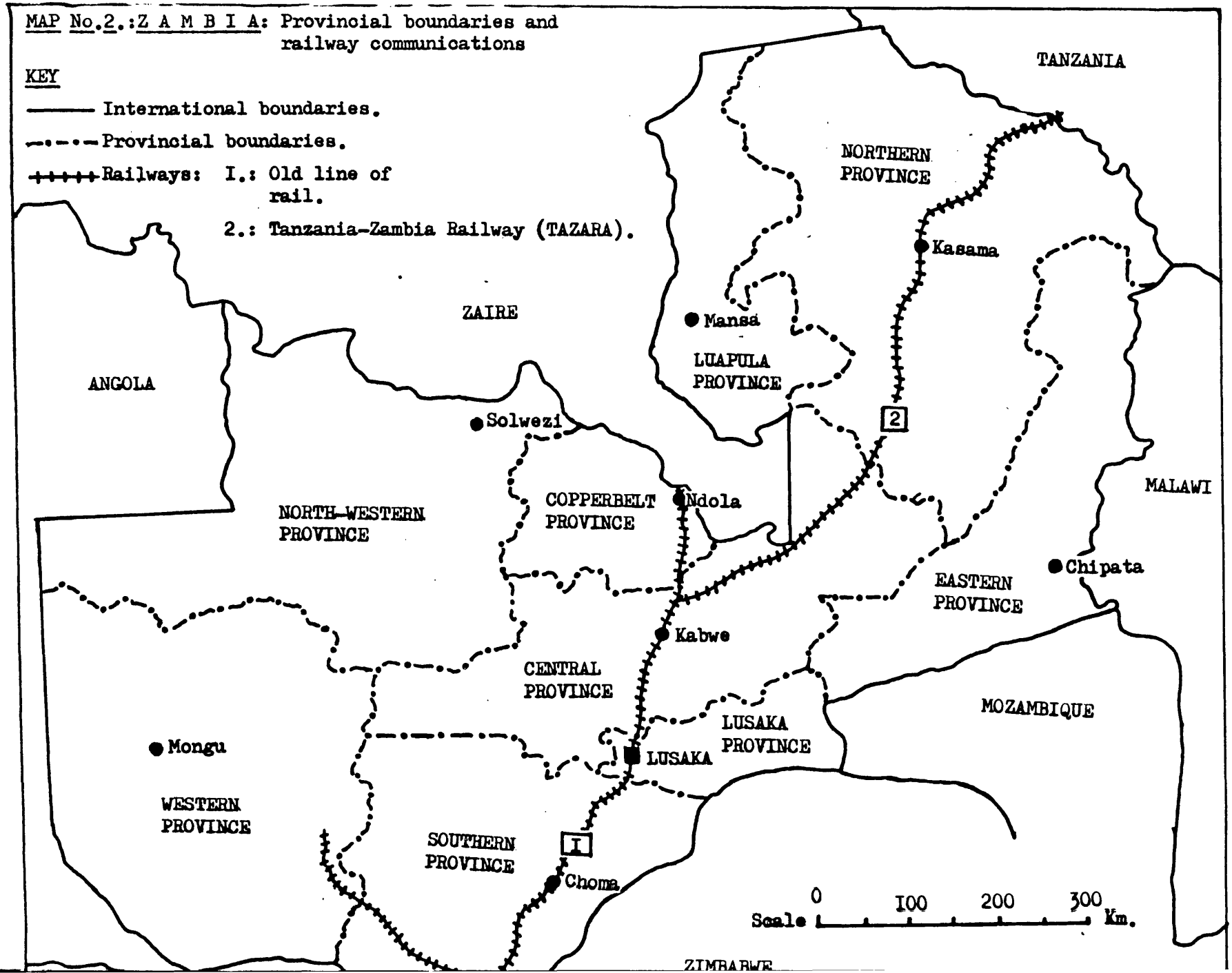

MAP No.2.:Z A M B I A: Provincial boundaries and railway communications
KEY
International boundaries.
Provincial boundaries.
Railways: I.: Old line of rail.
2.: Tanzania-Zambia Railway (TAZARA).
TANZANIA
NORTHERN PROVINCE
Kasama
Mansa
ZAIRE
LUAPULA PROVINCE
ANGOLA
Solwezi
2
MALAWI
COPPERBELT PROVINCE
Ndola
NORTH-WESTERN PROVINCE
Chipata
EASTERN PROVINCE
Kabwe
CENTRAL PROVINCE
MOZAMBIQUE
LUSAKA PROVINCE
Mongu
LUSAKA
WESTERN PROVINCE
SOUTHERN PROVINCE
1
Choma
0 100 200 300 Km.
Scale
ZIMBABWE


MAP No.2.:Z A M B I A: Provincial boundaries and railway communications
KEY
International boundaries.
Provincial boundaries.
Railways: I.: Old line of rail.
2.: Tanzania-Zambia Railway (TAZARA).
TANZANIA
NORTHERN PROVINCE
Kasama
ZAIRE
Mansa
LUAPULA PROVINCE
ANGOLA
Solwezi
2
MALAWI
NORTH-WESTERN PROVINCE
COPPERBELT PROVINCE
Ndola
Chipata
EASTERN PROVINCE
Kabwe
CENTRAL PROVINCE
MOZAMBIQUE
LUSAKA PROVINCE
Mongu
LUSAKA
WESTERN PROVINCE
SOUTHERN PROVINCE
1
Choma
0 100 200 300 Km.
Scale
ZIMBABWE